TEXAS REGISTER

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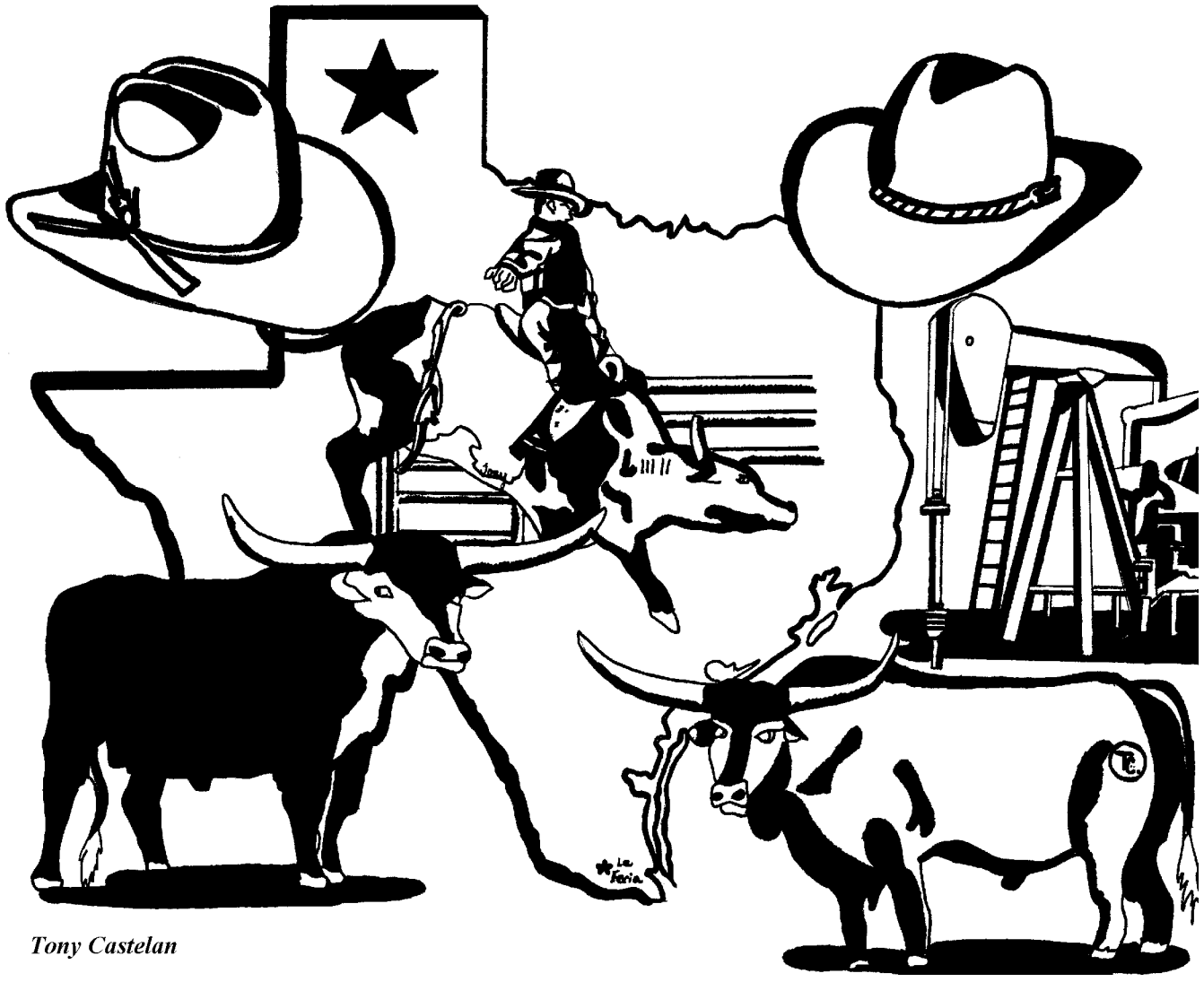

Tony Castelan

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 7, 2005

Appointed to be Inspector General for Health and Human Services for a term to expire February 1, 2006, Brian Glenn Flood of Austin. Mr. Flood is being appointed.

Appointments for April 12, 2005

Appointed to the Finance Commission of Texas for a term to expire February 1, 2010, Cindy F. Lyons of El Paso. Ms. Lyons is replacing Mr. Victor Puente of Arlington whose term expired.

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2009, H. L. Bert Mijares, Jr. of El Paso (replacing Daniel Serna of Arlington whose term expired).

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2011, Marcellus A. Taylor of Lewisville (replacing Helen Huey of Houston whose term expired).

Appointed to the Texas Public Finance Authority for a term to expire February 1, 2011, Linda Lea McKenna of Harlingen (replacing H. L. Bert Mijares of El Paso whose term expired).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2009, Kimberly A. Shambley of Dallas (replacing Cary Yates who resigned).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2011, Valeri Stiers Malone of Wichita Falls (Ms. Malone is being reappointed).

Appointed to the Manufactured Housing Board for a term to expire January 31, 2011, Michael H. Bray of El Paso (Mr. Bray is being reappointed).

Designating Valeri Stiers Malone of Wichita Falls as Presiding Officer of the Manufactured Housing Board for a term at the pleasure of the Governor. Ms. Malone is replacing Cary Yates as presiding officer. Mr. Yates no longer serves on the board.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Shirley Neeley, Ed.D. of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Dr. Raymund Paredes of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Senator Florence Shapiro of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Senator Royce West of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Representative Kent Grusendorf of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Representative Geanie Morrison of Austin.

Appointed to the Education Commission of the States for a term at the pleasure of the Governor, Mr. Todd Webster of Austin.

Appointed to the Interstate Oil and Gas Compact Commission, Environmental and Safety Committee, for a term at the pleasure of the Governor, J. Roger Kelley of Humble.

Appointed to the Interstate Oil and Gas Compact Commission, Energy Resources Research and Technology Committee, Kenneth Duncan Dickson of Rockwall.

Rick Perry, Governor

TRD-200501541

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Appointments for April 18, 2005

Appointed to the Sabine River Compact Administration for a term to expire July 12, 2010, Robert Byron Reeves of Center. Mr. Reeves will replace Thomas Reeh of Orange whose term expired.

Appointed to the Texas Human Rights Commission for a term to expire February 1, 2011, John Hamice James of Midland (replacing C. Robert Keeney of Houston whose term expired).

Appointed to the Texas Human Rights Commission for a term to expire February 1, 2011, Shara Michalka of Dallas (replacing Mary Banks of Dallas whose term expired).

Appointed to be Adjutant General of Texas for a term to expire February 1, 2007, Charles Gary Rodriguez, Ph.D., Brig. General of San Antonio. Brigadier General Rodriguez will replace Lieutenant General Wayne Marty whose term expired.

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2011, Patricia A. Wommack of Lone Star (replacing Judy Lee of Mt. Pleasant whose term expired).

Appointed to the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 2011, James Richard "Dick" Goodman of Clarksville (Mr. Goodman is being reappointed).

Appointed to the State Office of Risk Management for a term to expire February 1, 2009, Kenneth N. Mitchell of El Paso. Mr. Mitchell is replacing Gerald Lavey of Humble whose term expired.

Rick Perry, Governor

TRD-200501630

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0333-GA

Requestor:

Mr. Thomas Davis, Director

Texas Department of Public Safety

5805 N. Lamar Blvd, Box 4087

Austin, Texas 78773-0001

Re: Whether a peace officer commissioned by the Texas Department of Public Safety is an "appointed officer" for purposes of article XVI, section 1 of the Texas Constitution (Request No. 0333-GA)

Briefs requested by May 11, 2005

RQ-0334-GA

Requestor:

The Honorable Dib Waldrip

Comal County Criminal District Attorney

150 N. Seguin, Suite 307

New Braunfels, Texas 78130

Re: Whether a county may assess drainage fees in the extraterritorial jurisdiction of a municipality (Request No. 0334-GA)

Briefs requested by May 11, 2005

RQ-0335-GA

Requestor:

The Honorable Carlos Uresti

Chair, Government Reform Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a justice of the peace may, under the state law, simultaneously serve as a municipal judge of a city located in the same county (Request No. 0335-GA)

Briefs requested by May 11, 2005

RQ-0336-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Jurisprudence Committee

Texas Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a municipality that has not enacted a residence homestead exemption under article VIII, section 1-b(h) of the Texas Constitution may adopt the tax limitation of section 1-b(h) (Request No. 0336-GA)

Briefs requested by May 11, 2005

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501621
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 19, 2005

♦ ♦ ♦

Opinions

Opinion No. GA-0316

The Honorable Kent Grusendorf

Chair, House Committee on Public Education

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

The Honorable Mike Krusee

Chair, House Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Post-hearing procedure in cases involving nonconsent tows (RQ-0278-GA)

S U M M A R Y

Where a nonconsent tow hearing authorized by chapter 685 of the Texas Transportation Code is conducted before a magistrate of a municipal court or municipal court of record, the magistrate's determination is final, and there is no appeal.

Opinion No. GA-0317

The Honorable Bill Hill

Dallas County District Attorney

Administration Building

411 Elm Street, Suite 500

Dallas, Texas 75202-3384

Re: Whether section 6.025(d) of the Tax Code violates article VIII, sections 1(a), (b) and 18(c) of the Texas Constitution (RQ-0285-GA)

S U M M A R Y

Section 6.025(d) of the Tax Code, which requires the chief appraisers of overlapping appraisal districts to enter into their districts' appraisal records the lowest appraised and market values from all the values determined by each appraisal district, does not as a matter of law violate article VIII, section 1(a) or (b) of the Texas Constitution. In a particular fact situation, a court could determine that a property value required by section 6.025(d) fails to appraise the property at its market value and causes a taxing unit to levy a tax that is not equal and uniform.

Section 6.025(d) does not violate the article VIII, section 18(c) requirement that the legislature establish a single review board for each appraisal district and that appraisal review board members reside in the appraisal district.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501642
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 20, 2005

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-523 The Texas Ethics Commission has been asked to consider whether a former elected officeholder may use unexpended political contributions to make expenditure in connection with his current non-elected position at a state agency.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200501569
Sarah Woelk
General Counsel
Texas Ethics Commission
Filed: April 15, 2005

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.4

The Texas Residential Construction Commission (the "commission") proposes new §300.4, concerning the establishment of an agency sick leave pool. The new rule is proposed pursuant to Government Code §661.002, which grants a state agency the authority to establish a voluntary sick leave pool program.

Stephen D. Thomas, Executive Director, has determined that for each year of the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rule is in effect the public will benefit from the flexibility afforded to agency employees or their family members suffering from a catastrophic illness or injury.

Mr. Thomas has also determined that there will be no effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule.

Mr. Thomas has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Proposed Sick Leave Pool Rule" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule.

The new rule is proposed under Government Code §661.002, which authorizes a state agency to establish a sick leave pool for its employees.

The statutory provisions affected by the proposal are those set forth in Chapter 661, Government Code, and Title 16, Property Code.

No other statutes, articles, or codes are affected by the proposal.

§300.4. Sick Leave Pool.

A sick leave pool is established to provide for the alleviation of hardship caused to an employee and employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

(1) The commission's human resources coordinator is designated as the pool administrator.

(2) The pool administrator, with the advice and consent of the Executive Director, will establish a policy, operating procedures and forms for the administration of this section and law governing the operation of the pool.

(3) Donations to the pool must be made by written request containing a certification that the donation is strictly voluntary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 13, 2005.

TRD-200501537
Susan Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: May 29, 2005
For further information, please call: (512) 475-5095

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to 16 TAC §80.80, regarding a duplicate license, and examination and other fees for licensed court interpreters.

The proposed amendment reduces the duplicate license fee from $50 to $25 and clarifies the fees for licensed court interpreter examinations. The proposed amendment also eliminates the fee for changing name and address, and for obtaining additional license endorsements.

This amendment is needed to make the duplicate license fee consistent with other Department duplicate license fees and to clarify the fees for examinations.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the amended section.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely licensee contact information changes for the licensed court interpreter program. There may be a very slight decrease in revenue to the Department as a result of the reduced and eliminated fees. Mr. Kuntz anticipates decreased economic costs to licensees, including small businesses and micro-businesses because of the reduction and elimination of fees.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile: (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Government Code, Chapter 57, §57.045 which authorizes the commission to set license and examination fees for the licensed court interpreter program and Texas Occupations Code, §51.202 which directs the Commission to set fees in amounts reasonable and necessary to cover the costs of administering programs or activities.

The statutory provisions affected by the proposal are those set forth in Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§80.80. Fees.

(a) - (c) (No change.)

(d) The fee for obtaining a duplicate license is $25[, ~~making a change in name or address, or obtaining an additional language endorsement shall be $50 each~~].

(e) The fee for the written examination is $100 [~~Each language examination shall have a separate fee of $100 for the written examination and $300 for the oral examination~~].

(f) The fee for each oral examination is $300.

(g) [~~(f)~~] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501597
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 29, 2005
For further information, please call: (512) 463-7348

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General (OAG) adopts amendments to §61.201 (Subchapter C, Application), §§61.402, 61.404, 61.405, and 61.411 (Subchapter E, Pecuniary Loss), §§61.503, 61.506, and 61.507 (Subchapter F, Medical Care), and adopts new §61.508 (Subchapter F, Medical Care), relating to the rules for the administration of the Crime Victims' Compensation Program. The amendments and new rule are adopted without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1553) and will not be republished.

The amendments and new rule will better serve victims of crime by improving the administration of the CVC fund.

Section 61.201 clarifies who is authorized to sign an application for minors.

Section 61.402(a) specifies who is eligible to receive loss of earnings and how to submit forms; subsections (c) and (d) clarify that the OAG will be responsible for scheduling and paying for independent medical evaluations; and subsection (m) limits the hours that will be paid for individual appointments to prevent overpayment of lost earnings.

Section 61.404(a) provides for starting points other than a person's residence for travel reimbursements; subsection (b) has been changed to accurately reflect the covered articles; subsection (d) clarifies the employment verification process; subsection (e) makes a technical correction to a citation; subsections (f) and (g) change the term "compensation" to "reimbursement" for clarity and make technical corrections to a citation; subsection (h) limits the hours that will be paid for individual appointments to prevent overpayment of lost earnings; and subsection (i) limits travel expenses when victims or claimants are receiving free counseling.

Section 61.405(b) provides the procedures for child care reimbursements and places a cap on the benefit and (e) makes a technical change to the dollar amount listed for replacement costs.

Section 61.411(b) provides the procedures for submitting information when compensation benefits are ongoing.

Section 61.503(d) includes reimbursement provisions for psychiatric medication for patients receiving counseling and subsection (e) adds new language to limit payment of health care services when someone else has been ordered to pay as a means of ensuring collateral sources are used for payment.

Section 61.506 adds a provision to establish and define a standard of fair and reasonable for dental care services.

Section 61.507(c) provides for the method of payment for out of state health care services, other than acute trauma care; subsection (d) defines fair and reasonable payments for inpatient trauma care; and subsection (e) adds provisions to process bills submitted by service providers for amounts less than $5.00.

Section 61.508 outlines the process for reviewing health care services and standards, defines medically necessary services, and adds provisions for processing bills submitted more than five years after the date of service.

According to Texas Constitution, art. I, § 31, the compensation to victims of crime (CVC) fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance.

The adopted amendments and new rule accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the CVC fund as required by the Administrative Procedures Act, Texas Government Code, Ch. 2001.

Texas Code of Criminal Procedure, Art. 56.33 provides that the OAG shall adopt rules governing the administration of the CVC fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services.

No comments were received regarding the amendments and the new rule.

SUBCHAPTER C. APPLICATION

1 TAC §61.201

The amendments are adopted under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501588

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: May 8, 2005
Proposal publication date: March 18, 2005
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.402, 61.404, 61.405, 61.411

The amendments are adopted under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501589
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: May 8, 2005
Proposal publication date: March 18, 2005
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

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SUBCHAPTER F. MEDICAL CARE

1 TAC §§61.503, 61.506, 61.507

The amendments are adopted under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501590
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: May 8, 2005
Proposal publication date: March 18, 2005
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

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1 TAC §61.508

The new rule is adopted under the Texas Code of Criminal Procedure, Art. 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The new rule effects Texas Code of Criminal Procedure, Chapter 56.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501591
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Effective date: May 8, 2005
Proposal publication date: March 18, 2005
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §1.1309

The Finance Commission of Texas (the commission) adopts an amendment to Chapter 1, Subchapter R, concerning model clauses. The purpose of the amendments is to make technical changes that clarify certain provisions or correct technical errors within the rules. One amendment corrects the pronoun "your" to "my" in §1.1309. The amendment also implements a technical correction to change the itemization of amount financed in §1.1309. The rule is adopted with non-substantive changes to the proposal published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 955). The commission made editing and clerical corrections to Figure: 7 TAC §1.1309(b).

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the proposed amendment will be providing clarity in the model forms. There is no anticipated cost to persons who are required to comply with the amendment as adopted. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

The commission received no written comments on the proposed rule.

The amendment is adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provision (as currently in effect) affected by the adopted amendment is Texas Finance Code, Chapter 348.

§1.1309. Permissible Changes.

(a) Creditors may make the following types of changes to the model clauses and the model contracts and may still be eligible for the defenses provided by Texas Finance Code, §349.101;

(1) Deleting inapplicable disclosures;

(2) Using a line for the consumer to initial, rather than a checkbox;

(3) Adding a signature line to the insurance disclosures to reflect joint policies;

(4) Substituting another term for "buyer", "seller" or "creditor" that has the same meaning, or use of pronouns such as "you", "we" and "us" or "it;"

(5) Changing the person of the pronouns to refer to the seller as "I" or "me" and the buyer as "you" or "your;"

(6) Substituting the word "vehicle" for the term "motor vehicle;"

(7) Presenting the model clauses in any order, and combining or further segregating at the creditor's option;

(8) Inserting descriptive headings or number provisions;

(9) Changing the case of a word if otherwise permitted by the Texas Finance Code;

(10) Omitting references to different provisions for heavy commercial vehicles where the creditor elects to treat buyers of heavy commercial vehicles under the rules applicable to other vehicles;

(11) Moving provisions from one side of the form to the other and directing the buyer to see the other side or placing all of the provisions on the same side of the form; or

(12) Changing any provision to comply with federal law.

(b) A sample model motor vehicle retail installment contract. Figure: 7 TAC §1.1309(b)

(c) A contract may include other provisions that are not prohibited by law, but the other provisions must be submitted to the Office of Consumer Credit Commissioner for readability review before the creditor includes them.

(d) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the buyer than those that would result from the use of a model clause.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501568

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: May 5, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 936-7640

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PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 81. MORTGAGE BANKER REGISTRATION

7 TAC §81.1, §81.2

The Finance Commission of Texas ("Finance Commission") adopts new Chapter 81, 7 TAC §81.1, Definitions, and 7 TAC §81.2 Loan Status Forms. The purpose of the new rule is to promulgate standard forms to be used by a mortgage banker who represents to a prospective applicant that the applicant has been pre-approved or pre-qualified for a mortgage loan. The rule is adopted with changes from the rule as published for comment on December 31, 2004 in the *Texas Register* (29 TexReg 12070). The changes are deemed to be non-substantive.

The Mortgage Banker Registration Act, *Finance Code Chapter* 157, (the "Act") requires registration of mortgage bankers and creates a system of regulation for them. The Act directs the Finance Commission to promulgate regulations to implement the Act (the "Regulations") and specifically authorizes the Finance Commission to adopt rules to adopt standard forms for use in representing that an applicant has been preapproved or prequalified for a mortgage loan. The Commissioner of the Texas Savings and Loan Department ("Department") is charged with administration of the Act.

The Finance Commission initially published the proposed rule in the November 5, 2004 issue of the *Texas Register* (29 TexReg 10188). The Commission received five comments. Three comments were from individuals who identified themselves as real estate agents or brokers. These individuals supported the original proposed rule. They expressed their belief that mortgage bankers and mortgage brokers should adhere to the same rules.

In addition to the individuals, the Mr. Tom Morgan commented on behalf of the Texas Association of Realtors ("TAR") on behalf of the rule. While TAR generally supported the original proposal, as to the Conditional Approval Letter, TAR commented: "TAR is concerned that allowing a Mortgage Banker to check "no" in response to these questions *(referring to questions relating to reviewing credit report and credit score and verification of certain financial information)*, dissipates the value of the form to the consumer."(language in italics not in original). TAR suggested that the utility of the form to a seller of property who relied on the conditional approval is also diminished.

Comments on the original proposal were also received from Deborah Goodell Polan on behalf of the Texas Financial Services Association (TFSA). TFSA indicated that the proposed rule appeared to be incongruous with activity permitted under the Fair Credit Reporting Act (FCRA), and that the rule would prohibit creditors from offering pre-screened firm offers of credit in Texas. Under FCRA, a creditor is permitted to make a firm offer of credit to a prospective borrower prior to the consumer submitting an

application for credit. The FCRA establishes restrictions on this activity. Because certain loan terms such as the amount of the loan, interest rate, and payment terms are not known at the time the firm offer of credit is extended, TFSA is concerned that "since Form A requires disclosure of information not yet available to the creditor in this scenario, it will be impossible to comply with the proposed regulation, leading to the effective elimination of firm offers of credit by mortgage bankers." TFSA proposed that §81.2(a) be limited to "applicants" rather than "prospective applicants", or that an express exception be made for firm offers of credit made in conformity with FCRA and its implementing regulations.

In addition to these comments, the Department received an oral comment that the provisions of §81.2(a)(1) and (b)(1) should be modified to make the use of the descriptive heading "Conditional Qualification Letter" and "Conditional Approval Letter" mandatory and not optional.

In response to these comments, the Finance Commission republished for comment the proposed rule with changes in the December 31, 2004 issue of the *Texas Register*. As re-proposed, the descriptive headings in (a)(1) and (b)(1) are mandatory and not optional.

In republishing the proposed rule the Finance Commission sought comments on the following issues: (1) should the descriptive headings be mandatory or optional; (2) should Form B permit a mortgage broker to answer "No" to the credit and verification of information questions as suggested, or should the Form B more closely resemble the companion form used by mortgage brokers currently under §80.22; and (3) how should the final rule address the issue of "firm offers of credit" made in conformity with the FCRA?

Because the Finance Commission anticipates that the forms required by mortgage brokers will be revised to make them substantially similar to the final mortgage banker forms, these questions were also discussed at the January 26, 2005 meeting of the Mortgage Broker Advisory Committee (MBAC). The MBAC agreed that the descriptive headings should be mandatory and not optional. The MBAC also agreed that the mortgage banker form conditional qualification letter could provide for a "firm offer of credit" exemption. The MBAC reached no consensus as to whether or not the comment of TAR should be adopted relating to deleting the "No" column from the Conditional Approval Letter.

The only comments received on the proposed rule as republished were submitted by Mr. Larry Temple on behalf of the Texas Mortgage Bankers Association. On the issue of whether or not the use of the descriptive heading "Conditional Qualification Letter" and "Conditional Approval Letter" should be mandatory or optional, TMBA favors optional.

As to the elimination of the "No" column from Form B, TMBA expressed that it was not in objection to the change suggested by TAR. On the third issue relating to exempting persons extending "firm offers of credit" from the requirements for using the Conditional Qualification letter, TMBA stated that it would support either exempting "firm offers of credit" from the requirements of §81.2(a) or changing the term "prospective applicant" to "applicant."

The final rule as adopted makes the use of the descriptive headings "Conditional Qualification Letter" and "Conditional Approval Letter" mandatory as provided in the republished proposed rule. The Finance Commission believes that this requirement promotes uniformity and better informs consumers and their representatives as to what the letter should contain. Also, the use of these descriptive headings assists consumers in clearly distinguishing between the prequalification letter and the conditional approval letter. This reduces the possibility that a consumer might confuse the prequalification letter and the conditional approval letter.

The final rule adopts the comment of TAR and eliminates the "No" column from Form B. The Finance Commission concurs that this change increases the utility of this form and decreases the possibility of consumer misunderstanding.

Finally, the adopted rule provides that a person extending a "firm offer of credit" in conformity with the Fair Credit Reporting Act is exempt from the required use of the prequalification letter. The Finance Commission believes that the strict requirements imposed on the use of firm offers of credit are adequate to protect consumer interests at the pre-application stage.

The new rules are adopted under *Finance Code Chapter*, Section 157.011 which authorizes the Finance Commission to adopt rules to implement or fulfill the purposes of the Mortgage Banker Registration Act and to adopt by rule required standard forms to be used by mortgage bankers who represent that a person has been pre-approved or pre-qualified for a mortgage loan

The section of the Mortgage Banker Registration act affected by the new rules is *Finance Code Chapter* §157.011(b) relating to adoption of standard forms for use by mortgage bankers.

§81.1. Definitions.

(a) "Mortgage banker" shall have the same meaning as that provided in *Finance Code Chapter* §157.002(2).

(b) "Mortgage loan" shall have the same meaning as that provided in *Finance Code Chapter* §157.002(3).

§81.2. Loan Status Forms.

(a) Unless exempted under subsection (c), whenever a mortgage banker provides a prospective loan applicant with written confirmation of the prospective loan applicant's conditional qualification for a loan that has not been approved, the mortgage banker shall use the form attached as Form A below. Such form may be modified as follows:

(1) The descriptive heading "Conditional Qualification Letter" may not be omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Additional items that the mortgage banker has reviewed may be described;

(4) Additional terms, conditions, and requirements may be added; and

(5) An alternative form may be used if it provides at least the same information as is set forth in the approved form.
Figure: 7 TAC §81.2(a)(5)

(b) Whenever a mortgage banker or loan officer provides a loan applicant with confirmation that an application for a mortgage loan has been approved as to credit but not as to collateral, the mortgage banker may use the form attached as Form B below. Such form maybe modified as follows:

(1) The descriptive heading "Conditional Approval Letter" may not be omitted;

(2) Additional aspects of the Loan may be described as long as they are not misleading;

(3) Fees charged may be disclosed but such disclosure shall not serve as a substitute for the Good Faith Estimate required by the Real Estate Settlement Procedures Act.

(4) Additional items that the mortgage banker has reviewed may be described;

(5) Additional terms, conditions, and requirements may be added;

(6) An alternative form may be used if it provides at least the same information as is set forth in the approved form.
Figure: 7 TAC §81.2(b)(6)

(c) A mortgage banker who makes a "firm offer of credit" as defined in the Fair Credit Reporting Act (the "FCRA", 15 USC §1681 et seq), is exempted from the requirement to use the Conditional Qualification Letter as required by subsection (a) provided that the firm offer of credit is made in conformity with the requirements of the FCRA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501594
John Fleming
General Counsel
Texas Savings and Loan Department
Effective date: May 8, 2005
Proposal publication date: December 31, 2004
For further information, please call: (512) 475-1353

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 49. 2005 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.3, 49.7, 49.9

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, the amendment of §49.3 (relating to Definitions), §49.7 (relating to Regional Allocation Formula, Set-Asides, Redistribution of Credits), and §49.9 (relating to Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations) of the 2005 Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) as proposed and published in the January 7, 2005, issue of the *Texas Register* (30 TexReg 13).

The section is amended in order to enact changes considering the Governor's rejection of the 2005 qualified allocation plan. On February 23, 2005, by Order 05-02, the Governor approved these amendments.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 2306; the Internal Revenue Code of 1986, §42, as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing tax credit allocations in the State of Texas.

No other code, article or statute is affected by these amended sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 18, 2005.

TRD-200501592
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 8, 2005
Proposal publication date: January 7, 2005
For further information, please call: (512) 475-4595

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CHAPTER 51. HOUSING TRUST FUND RULES

10 TAC §51.5

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, the amendment of §51.5, concerning Basic Eligible Activities for the Housing Trust Fund as published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11234).

No comments were received.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501598
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 8, 2005
Proposal publication date: December 3, 2004
For further information, please call: (512) 475-4595

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

The Texas Residential Construction Commission ("commission") adopts amendments at Title 10, Part 7, Chapter 300, §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code. The amendments are adopted with changes to the proposed text as published in the January 28, 2005 issue to the *Texas Register* (30 TexReg 351). The amendments add definitions for the terms "construction activity" and "structural failure" and revises the definition of "statutory warranty".

The amendments are adopted to implement Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. The amendments are also adopted to implement Property Code §§401.002(14) and 430.001, which requires the commission to adopt warranty and building and performance standards, and specifically a definition for "structural failure."

Written comments were received from Robert L. Russell Bush on February 23, 2005, and Mr. Gregory Harwell on February 26, 2005, regarding the proposed addition of the term "structural failure". Texas Association of Builders sent a letter concurring with Mr. Bush's comments. Mr. Bush and Mr. Harwell commented that the proposed definition of "structural failure" in §301.1(23) should be changed. Mr. Bush stated that the proposed definition is inaccurate from an engineering standpoint because it infers that a failure has occurred merely because there has been a finding of some non-compliance with the commission-adopted performance standards. Mr. Bush stated that not all deviations from the performance standards will so drastically impact the structural performance of a house that it can be said to have failed.

Mr. Bush further commented that the proposed definition does not draw the necessary distinction between failures discussed from a structural aspect as opposed to failures discussed from a performance aspect. Mr. Bush stated that this concern over the use of the term "failure" has been raised previously by the Texas Board of Professional Engineers and the Texas Section of the American Society of Civil Engineers.

Mr. Bush further stated that if the proposed definition were adopted then any deviations from the performance standards, no matter how slight, will be seen as a structural failure, even if the deviation has no effect on the performance of the house for residential use. Mr. Bush suggested that the proposed definition be changed to read: "Structural failure - The non-compliance with the performance standards for major structural components found in §304.100 of these rules, coupled with a loss of the component's load-bearing capacity to the degree that it materially impacts homeowner safety."

The commission declines to accept the suggested change. The commission believes that Mr. Bush's suggestion would limit the definition to require a material impact on homeowner safety before being considered a structural failure, whereas the performance standards for major structural components adopted by the commission require that the component's failure not compromise the integrity of the structural system. Property Code §401.002 (14) states that "structural failure", as used in Title 16 will have the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under §430.001. In Title 16, the term "structural failure" is used once in Chapter 429 regarding the requirement that if the third-party inspector's recommendation involves a dispute regarding a "structural failure", one of the state inspectors must be a licensed professional engineer. Given the limited applicability of the term in Title 16 and that the commission's proposed definition is for the purpose of interpreting and construing commission rules, the commission's proposed definition is more appropriate for those uses than the definition suggested by Mr. Bush.

Mr. Harwell asserted that three difficulties exist with the proposed definition of "structural failure." He suggests that the commission revise the definition to read "Structural failure - non-compliance with the performance standards for major structural components found in §304.100 of these rules, causing physical damage to the component, coupled with a loss of the component's load-bearing capacity to the degree that it materially impacts homeowner safety."

Mr. Harwell states that making the definition of structural failure synonymous with non-compliance with the performance standard would "create a potentially disastrous situation for homeowners" because homeowners would be required to disclose at the time that the home is sold that it had a "structural failure" even if the problem was a slightly bowing wall that was corrected years previously. Mr. Harwell further speculates that homeowners insurance companies may decline to insure house that have suffered a "structural failure" much like the problems that have arisen from homes that have experienced water leaks.

Mr. Harwell similarly objects to the proposed definition of the term for the reason stated by Mr. Bush that the definition is at odds with the consensus of engineering opinion on the term. Finally, Mr. Harwell states that his proposed definition is similar to that promulgated by the United States Department of Housing and Urban Development.

For the reasons stated above regarding the limited use of the term "structural failure" in Title 16 of the Property Code and the commission's rules, and further given that there is an entirely different definition for "structural failure" when the term is used in Chapter 27 of the Property Code apparently without causing problems with homeowner insurance availability and sales disclosures, the commission declines to adopt Mr. Harwell's suggested changes.

As a result of the comments, the commission has added language to the definition of "structural failure" to clarify that the definition is applicable only to Property Code §429.001(b).

All comments regarding these sections, including any not specifically referenced herein, were fully considered by the commission.

Cross Reference to Statutes: Title 16, Property Code §§401.002(14), 408.001 and 430.001.

No other statutes, articles, or codes are affected by the adoption.

§301.1. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that is a potential construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more Intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--

(A) any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(i) a new home;

(ii) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(iii) an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(B) When required by the context of the rule, the term may include:

(i) an owner, officer, director, shareholder, partner, affiliate or employee of the builder;

(ii) a risk retention group governed by §21.54, Insurance Code, that insures all or any part of builder's liability for the cost to repair a residential construction defect; and

(iii) a third-party warranty company and its administrator.

(5) Building and performance standards--those standards that apply to home construction built pursuant to a transaction governed by the Act.

(6) Commission--the Texas Residential Construction Commission.

(7) Construction Activities--actions taken by the builder or at the direction of the builder by an employee, agent, contractor or subcontractor of the builder during the process of building the home or the improvement to the home.

(8) Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(9) Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(10) Dwelling unit--a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(11) Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(12) Home--the real property, improvements and appurtenances thereto for a single-family residential dwelling unit or duplex.

(13) ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(14) Improvement to the interior of an existing home when the cost of the work exceeds $20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $20,000 to be paid by a homeowner to a single builder.

(15) Living space--the enclosed area in a home that is suitable for year-round residential use.

(16) Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(17) Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(18) Person--an individual, partnership, company, corporation, association, or any other legal entity, however organized.

(19) Remodeler--any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(20) Single-family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(21) State inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process.

(22) Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air conditioning delivery systems; and

(C) ten years for major structural components of the home; and

(D) ten years for the warranty of habitability.

(23) Structural failure--for purposes of Property Code §429.001(b) only, the term means non-compliance with the commission-adopted performance standards for major structural components.

(24) Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(25) Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress.

(26) Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds $20,000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2005.

TRD-200501539
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: May 4, 2005
Proposal publication date: January 28, 2005
For further information, please call: (512) 475-0595

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CHAPTER 303. REGISTRATION
SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

10 TAC §§303.250 - 303.266

The Texas Residential Construction Commission ("commission") adopts new Subchapter D, §§303.250 - 303.266, relating to Third-Party Warranty Companies. Sections 303.250 - 303.252 are adopted with changes to the proposed text as published in the January 28, 2005, issue of the *Texas Register* (30 TexReg 353). Sections 303.253 - 303.266 are adopted without changes and will not be republished.

Changes made to the sections were in response to comments received, to correct errors and for clarification purposes. The new subchapter outlines the commission's rules and procedures for the approval of third-party warranty companies.

Written comments were received from Gregory A. Harwell on February 26, 2005, regarding the new sections. Mr. Harwell commented that §303.250 should be revised to clearly state that a builder electing to provide warranty coverage through a commission-approved warranty company is in fact transferring potential liability to the warranty company. Mr. Harwell believes that this change would tie the existence of the approved warranty company to the liability transfer provided for by the Act. The commission agrees that the change would make this clear. Therefore, the rule text has been revised accordingly.

Next, Mr. Harwell commented that §303.251 should be modified to make it clear that a builder has the option to transfer less than all of the four warranties established by Chapter 304 to an approved third-party warranty company. The commission agrees that the change would clarify the commission's intent. The rule text has, therefore, been revised.

Mr. Harwell also commented that §303.251(1) should be modified to replace the word "accept" with "assume". The commission agrees that in this section the word "assume" more precisely describes the action that may be taken by a third-party warranty company. Therefore, the word "accept" has been replaced with the word "assume". Further, Mr. Harwell commented that the word "reservation" in §303.251(1) should be replaced with the phrase "limitation other than those provided by the Act and these Rules". The commission declines to accept the suggested phrase because the word "reservation" is clear and requires no modification.

Mr. Harwell further suggested that §303.251(2) be modified to insert the phrase "in an action" to make clear that a court or arbitrator is the authority that may ultimately determine a third-party warranty company's or builder's obligations to a homeowner under the Act. The commission agrees that the change would clarify a third-party warranty company's potential obligations. The rule text has, therefore, been revised.

Mr. Harwell also commented that §303.252(b) should be amended to clarify that the commission may not require a third-party warranty company to provide any particular warranty, including a warranty of habitability. As a reason, Mr. Harwell noted that certain companies may only wish to cover specific warranties such as for appliances, for example, but not others. The commission agrees with the change. The rule text has been revised.

Mr. Harwell further suggested the addition of §303.252(c) that states "A third-party warranty company shall be provided with all rights and defenses of a builder under the Act and these rules, except as modified herein". The commission disagrees because the Act's definition of builder includes a third-party warranty company and its administrator. Thus, the commission declines to accept the suggestion.

Mr. Harwell finally suggested that §303.266 should be amended to clarify that the administrator of a warranty for a third-party warranty company may also provide other services to the warranty company that are not covered by the Act. The commission declines to accept the suggestion because those other services possibly performed by the administrator of a warranty are outside the commission's jurisdiction.

Written comments were also received from Max Hoyt, president of ACES Builders' Warranty, on February 28, 2005. Mr. Hoyt first commented that §303.251 should be amended by inserting the phrase "meeting eligibility requirements in §303.254(b)(2) and (3)" in order to clarify what an applicant must demonstrate to be eligible for approval as a third-party warranty company. The commission declines to accept the suggested phrase because the requirements for eligibility are clear in §303.254.

Mr. Hoyt also commented that §303.255(e) should be amended because it does not clearly state a time by which the commission must act on an application after the twenty-one day comment period after the notice of application has been published in the *Texas Register*. Mr. Hoyt's suggested adding language that would give commission staff a reasonable time after the expiration of the comment period to process any received comments. Once that process is complete, the commission shall consider the application at its next scheduled meeting. The commission disagrees because the time for notifying an applicant of denial is clearly stated in §303.259. Furthermore, the approval of applications according to the rules is an administrative function.

Mr. Hoyt further commented that the language in §303.259 that states that the commission shall deny an application if the applicant is "not qualified" or if approval of the applicant "does not serve the public interest" is vague. Mr. Hoyt suggested replacing §303.259(a) entirely with:

§303.259. Approval of an Application.

The commission shall approve an applicant that:

(1) is eligible according to §303.254;

(2) has submitted a complete application, including sample warranty, sample inspection procedures, and fee;

(3) has a designated agent who meets with the qualifications in §303.256 and §303.257; and

(4) has passed a criminal background review per §303.255(d).

The commission disagrees. The commission has used this same language for a review of the arbitrator applicants for certification without issue and believes that it provides the commission with sufficient latitude to carry out its regulatory mission. The commission must be assured that those applying to serve as certified third-party warranty companies not only meet the technical requirements for certification but also that they provide adequate service and responsiveness to those who are supposed to be beneficiaries of the third-party warranty company services. The commission therefore declines to accept the suggestion.

Written comments were also received from Robert L. Russell Bush on February 25, 2005. Similar to Mr. Harwell, Mr. Bush commented that §303.250 should be revised to clearly state that a builder electing to provide warranty coverage through a commission-approved warranty company is in fact transferring potential liability to the warranty company. As stated above, the commission agrees that the change would make this clear and the rule text has been revised accordingly.

Mr. Bush also commented that §303.251(1) should be amended to replace the phrase "fully accept, without reservation" with the word "perform". The commission declines to accept the suggestion because it has accepted a similar suggestion from Mr. Harwell, which satisfies the spirit of Mr. Bush's suggestion. Mr. Bush further suggested that §303.251(2) be amended to replace the phrase "those warranties" with "the warranty provided through the third-party warranty company." The commission declines to accept the proposed change because the rule is clear from the text that the third-party warranty company is only liable for those warranties actually transferred to the company.

Mr. Bush, like Mr. Harwell above, also suggested that §303.252(b) should be amended to clarify that the commission may not require a third-party warranty company to provide any particular warranty, including a warranty of habitability. The commission agrees with the change. The rule text has been revised.

Mr. Bush further commented that §303.255(2) should be amended to read that an applicant should submit to the commission a sample copy of the warranty that a builder will provide through the applicant's warranty program, as opposed to the warranty contract between the applicant and a builder or remodeler. Mr. Bush stated that his reason for this suggestion is that the commission should be concerned with the warranty that the builder provides to its customers through an approved third-party warranty company, not with the contract between the third-party warranty company and the builder or remodeler. The commission disagrees with the suggestion and declines to accept the proposed change. The commission finds that the issues raised by the requirements such as whether there is a transfer of liability and whether the third-party warranty company has agreed to assume without reservation the builder's warranty obligations under the Act will be contained in the contract between the third-party warranty company and the builder, not the contract between the builder and its customer.

Mr. Bush, similar to Mr. Hoyt, also commented that the language in §303.259(a) for denying an applicant is vague and subjective. The commission disagrees for the reasons above.

Mr. Bush commented similarly to Mr. Harwell that §303.266 should be amended. For the reasons stated above, the commission declines to accept the suggestion.

All comments regarding these sections, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The new sections are adopted to implement Property Code §§430.008, 430.009, 430.010 and 430.011. The new sections are also adopted under Property Code §408.001 which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

§303.250. Builder's Election.

A builder that elects to transfer potential liability for the warranties set forth in Chapter 304 of this title to a warranty company must use a third-party warranty company approved by the commission under this subchapter.

§303.251. Effective Transfer of Builder Liability.

To effectively transfer a builder's liability under one of the warranties set forth in Chapter 304 of this title to an approved third-party warranty company, the third-party warranty company must agree to:

(1) fully assume, without reservation, a builder's warranty obligations created by the Act; and

(2) make full payment for or repair any construction defect determined in an action to be covered by those warranties.

§303.252. Warranties.

(a) An approved third-party warranty company:

(1) may adopt warranties and building and performance standards in addition to those warranties and building and performance standards set forth in Chapter 304 of this title;

(2) may not reduce the limited statutory warranty and building and performance standards as set forth in Chapter 304 of this title.

(b) The commission may not require a third-party warranty company to provide any particular warranty, including the warranty of habitability.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2005.

TRD-200501536
Susan Durso
General Counsel
Texas Residential Construction Commission
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Proposal publication date: January 28, 2005
For further information, please call: (512) 475-5095

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

16 TAC §26.469

The Public Utility Commission of Texas (commission) adopts new §26.469, relating to Municipal Authorized Review of a Certificated Telecommunication Provider's Business Records with no changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11511).

The new rule will define the scope and procedures attendant to an authorized review of a provider's business records by a municipality pursuant to Texas Local Government Code §283.056(c)(3). This new rule is adopted under Project Number 29719.

The commission received comments on the proposed new section from the Coalition of Cities and the City of Houston (Coalition); SBC Texas; GTE Southwest Incorporated, doing business as Verizon Southwest (Verizon); Sprint Corporation (Sprint); CLEC Coalition and the City of Garland.

The comments that were received by commission staff indicated that there was a consensus among the parties to accept this rule as proposed at the December 2, 2004, Open Meeting. The only suggested modification to the rule was requested by Sprint. Additionally, some parties included comments containing proposed language changes to be included in the preamble to the rule.

Comments on Specific Rule Provisions

Sprint stated its concern regarding §26.469(c)(4)(B), which requires that the review be performed on-premises at the principal Texas office of the certificated telecommunications provider (CTP), unless otherwise agreed by the CTP and the municipality. Sprint suggested that the word "Texas" be removed from this section since its business records reside at its corporate headquarters in Overland Park, Kansas. Sprint argued that if a municipality determines that an on-premises review is necessary, it is more efficient to conduct that review at the location where the business records are kept. Sprint maintained that the majority of the audit could be handled by regular, overnight and electronic mail.

The City of Garland argued that if municipal representatives had to travel to Kansas, travel time alone would add substantially to the process, along with the uncertainties caused by travel delays. Efficiency would be better attained by having Sprint ship the records to Texas.

Commission response

The commission did not receive comments from any other party which participated in the negotiation of this rule voicing any concerns regarding the requirement of having an authorized review held at the CTP's principal Texas office. The commission notes that under P.U.C. Substantive Rule §26.465(i), relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers, a CTP is required to maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant municipality. The commission finds that in order to provide easy identification and review for the commission and the municipalities, it is incumbent upon the CTP to provide access to all records, books, accounts, or memoranda at the principal Texas office of the CTP. The commission therefore, declines to adopt Sprint's recommendation to remove the word "Texas" from P.U.C. Substantive Rule §26.469(c)(4)(B).

Comments on Preamble Language

The written comments that pertained to the preamble were received from the Coalition of Cities and the City of Houston (Coalition); SBC Texas; GTE Southwest Incorporated, doing business as Verizon Southwest (Verizon); Sprint Corporation (Sprint); CLEC Coalition and the City of Garland.

Business Records

The Coalition argued that the preamble should provide clarity as to the types of CTP business records which are subject to access by having commission staff list examples of types of business records that should be available for access. The Coalition suggested that the following business records be included in the preamble: (1) List of Services; (2) Procedure(s) used to determine classification of products and services as access lines and identification of categories of access lines; (3) Street address guide (SAG); (4) Adequate proof agreements; (5) Samples of billing records or invoices to customers; (6) Underlying records to support uncollectible customer accounts; and (7) Records as to lines added or dropped relevant to the reviewing period. The Coalition stated that the CTP's billing system should be sufficient to substantiate compliance with the access line reporting requirements pursuant to P.U.C. Substantive Rule §26.467(k)(2). Moreover, the Coalition noted that records are to be maintained in a manner which allows for easy identification and review consistent with P.U.C. Substantive Rule §26.465(i). The Coalition further argued that a list of all services that the CTP provides is necessary to ensure that all services have been characterized properly, categorized correctly, and that they have been designated as an access line.

SBC Texas argued that the Coalition continues to try to modify the intent of the Texas Legislature by changing the authorized review into an audit. SBC Texas contended that if that had been the intent of the Legislature, then the municipalities would have been granted the authority that ordinarily accompanies an audit, or the ability to conduct "an unfettered examination." Furthermore, SBC Texas contended that an authorized review is not and was not intended to be a term of art that means the same as the word audit. According to SBC Texas, these terms relate to the level of assurance regarding the reliability of an assertion in a financial statement. An audit provides high, but not absolute, assurance that the information subject to the audit is free of material misstatements, and is expressed in an audit report as reasonable assurance. A review, on the other hand, provides moderate assurance that the information subject to review is free of material misstatements and is expressed in an audit report as negative assurance. SBC stated that it is important to note that there is a difference between an audit and an authorized review and that the legislature clearly intended a less intrusive form of review.

SBC Texas further stated that had the CTPs and the municipalities been able to agree on sample descriptions of the types of records that should be subject to an authorized review, those examples would have been set forth in the agreed rule. Samples of billing records and customer proprietary network information are of significant concern to the CTPs. In addition, SBC Texas stated that the Coalition has raised for the first time, the issue regarding the category of documents described as "records as to lines added or dropped relevant to the reviewing period." SBC Texas indicated that it's not clear as to what is meant by this description and why it would be presented as requiring a clarification when it was never discussed during two years of negotiations. SBC Texas submitted that the commission should reject the request for these added requirements under the guise of sample descriptions.

Sprint argued that clarification of the type of business records necessary to conduct an authorized review is unnecessary since subsection (c)(3) of the proposed new section states that the CTP must provide the requesting municipality with a written list of the types of business records necessary to conduct an authorized review. Sprint noted that the Coalition's request for "detailed descriptions of services" provided substantially changes the intent of the proposed new section because it conflicts with subsection (c)(3) of the proposed new section, which requires a CTP to provide "brief" descriptions of the business records that are necessary to conduct an authorized review.

The CLEC Coalition noted that the parties agreed to establish general guidelines in the proposed new section because they could not agree on a "laundry list" of business records subject to review. The CLEC Coalition and Verizon objected to the Coalition's attempt to identify specific types of business records, after the fact, through clarification to the preamble. The CLEC Coalition's objection was also premised on its argument that CTPs are varied in their record keeping and many CTPs employ outside vendors to prepare access line reports.

Commission response

The commission finds that the proposed new section sets forth very general guidelines. In addition, the commission recognizes that the parties reached an agreement on the basic terms of the proposed new section with the understanding that further issues could be worked out cooperatively during the authorized review process. During such a process, the parties could determine the significance of various issues and identify those issues that continue to be in dispute. The commission believes that it is premature to place stipulations or numerous clarifications on this rule prior to the parties conducting a number of authorized reviews to determine what areas of dispute require resolution in the form of an amendment to this rule. However, the commission also believes that it would be in the best interest of the parties for the commission to communicate what it views as examples of business records that may be utilized during an authorized review. These examples are not intended to be all-inclusive nor an indication that such business records must be produced by a CTP if not currently generated in its normal course of business. Since the types of business records necessary to conduct an authorized review may vary with each CTP, the commission finds it is not possible to identify a comprehensive list of business records in the preamble. The commission notes that the Coalition has suggested numerous types of business records as examples to be placed in the preamble. It is reasonable to expect that some of the business records listed by the Coalition would vary by company, consequently, the commission chose not to include those records in the examples below; however, the commission expects the parties to work cooperatively to determine the additional business records that will be reviewed.

The commission agrees with SBC Texas that the release of customer billing statements that contain Customer Proprietary Network Information (CPNI) is of significant concern. Pursuant to Section 222 of the 1996 Federal Telecommunications Act (FTA), the commission determines that CTPs shall not be required to provide customer billing statements. On the other hand, examples of different types of business records that may be provided by the CTP are:

1. List of services that are being provided by the CTP including a brief description of each service. The commission agrees with the Coalition that the list of services is required by the municipalities to determine if services have been categorized correctly by the CTPs.

2. Street address guide (SAG). The commission notes that street address information is initially provided by the municipalities to the CTPs to be entered into the SAG. The commission agrees with the Coalition that a SAG would enable the municipalities to compare what addresses the CTP shows to be in the city limits as to what addresses the municipality actually has in the city limits to ensure that access lines have been reported correctly.

3. Support documentation for write-offs or uncollectible accounts. The commission notes that §26.467(k)(3)(A)(iii) states that if a CTP deducts or includes a direct write-off pursuant to §26.467(m)(2), the CTP shall complete a reconciliation report, showing a monthly delineation of the amount added to the total payment due to previously uncollectible direct write-offs, and the amount deducted from the total payment due to direct write-offs. The commission finds that since this report should already be submitted as part of the quarterly access line report filing under §26.467(k)(3)(A)(iii), it should be made available to the municipalities during the authorized review.

4. Adequate proof agreements. The commission notes that §26.467(k)(4)(H) states that a CTP, whether an underlying CTP or reselling CTP, shall make its adequate proof agreements available for review by municipalities and the commission upon request. The commission finds that since adequate proof agreements are currently required under §26.467(k)(4)(H), such agreements should be made available to the municipalities during the authorized review.

The commission has the expectation that the CTP and the municipality will work together to identify business records necessary to successfully complete the authorized review. Such cooperative effort should ultimately provide assurance to the municipalities that the CTPs have been correctly and accurately categorizing, reporting and submitting compensation to the municipalities for all access lines that are being served within the municipalities' city limits.

Time Period of Records Subject to Review

The Coalition argued that Texas Local Government Code §283.056(c)(3) mandates that an authorized review must be commenced within 90 days after the filing of a CTP's access line report, however, it does not restrict the time period for which the records may be examined. The Coalition stated that when no previous examination of the initial access line reports and supporting documents has been performed, it is paramount that these records be examined to determine the initial characterization of services and the designation of access line categories. The Coalition cited P.U.C Substantive Rule §26.465(i) that states, in part, "...The books and records for each access line count shall be maintained for a period of at least three years," as evidence that the commission intended for the municipalities to have access to CTP records for this period of time. The City of Garland concurred with the Coalition's comments.

The CLEC Coalition objected to any clarification of this rule as they deem it is unnecessary.

Sprint argued that the Coalition is attempting to rewrite the proposed new section with its clarifications. The proposed new section contains a 90-day window to conduct an authorized review of the CTP's records in order to ensure compliance with access line reporting requirements. This rule is consistent with Texas Local Government Code §283.056(c)(3), which requires a municipality to inspect a CTP's records within 90 days of the filing of a CTP's access line report.

Verizon objected to the Coalition's attempt to rewrite the rule after committing to the rule as it had been negotiated between the parties.

SBC Texas argued that the Coalition, in its interpretation of the 90-day limitation in the Texas Local Government Code §283.056(c)(3), has ignored a very important word--the word "if." The Texas Legislature has allowed municipalities to conduct authorized reviews if commenced within 90 days after the filing of a CTP's report of access lines pursuant to Texas Local Government Code §283.056(c)(3). SBC Texas averred that in the review of all the relevant language allowing authorized reviews as exceptions to the prohibition against broader inspection of CTP business records, the Coalition's argument fails.

Commission response

The commission finds that, pursuant to Texas Local Government Code §283.056(c)(3), a municipality may perform an inspection of a provider's business records to the extent necessary to conduct an authorized review, if commenced within 90 days *after the filing of a certificated telecommunications provider's report of access lines.* Since CTPs file access line reports on a quarterly basis, the commission finds that the only access line report which shall be subject to an authorized review by the municipalities is the access line report for the quarter for which a municipality initiated an authorized review within the 90 day time limit imposed by Texas Local Government Code §283.056(c)(3). The commission determines that the computation of the 90-day filing deadline, for the purpose of municipal authorized review, should commence on the first day of the access line reporting period for the next quarter. This practice shall allow a CTP an opportunity to file any amendments or corrections to a previously filed access line count for the quarter for which a municipality seeks authorized review. Moreover, it will eliminate any possible confusion as to what point the 90-day clock would commence for a municipality to file an intent to conduct an authorized review, in the event that a CTP filed modifications to its quarterly access line report prior to the start of the next reporting period. The commission recognizes that a CTP shall maintain the books and records for each access line count for a period, at minimum, of three years in accordance with P.U.C. Substantive Rule §26.465(i). The business records from other quarters may be utilized to determine the accuracy of the access line count report for the quarter subject to the authorized review. However, the municipalities may not challenge the accuracy of access line reports for quarters in which a municipality failed to initiate an authorized review within the time limit imposed by Texas Local Government Code §283.056(c)(3).

The commission recognizes that a CTP is not required to maintain such historical business records beyond the three year mandate. However, the commission expects that a CTP should, to the extent practicable, provide any and all pertinent historical business records in excess of three years of age in its care, custody or control. The commission believes that such cooperative effort between the CTP and municipality is consistent with the provisions of this new rule and the underlying purposes of Texas Local Government Code, Chapter 283 in assuring accurate and efficient municipal authorized access line count reviews.

The commission may revisit the record retention provisions in P.U.C. Substantive Rule §26.465(i) in the event that a three-year review of pertinent historical business records is insufficient to establish appropriate accuracy or if collaborative efforts fail to produce additional relevant business records within the care, custody or control of the CTP.

Administrative Remedy

The Coalition maintained that Texas Local Government Code §283.051(b) does not affect the right of a municipality to initiate legal action against a CTP that uses the public right-of-way to provide local exchange telephone service within a municipality and has not compensated the municipality in accordance with Texas Local Government Code Chapter 283. The City of Garland concurred with the Coalition's comments.

The CLEC Coalition argued that the Coalition's request for clarification of municipal rights is an attempt to determine substantive rights and should be rejected.

Verizon objected to the Coalition's attempt to rewrite the rule after committing to the rule as it had been negotiated between the parties.

SBC Texas argued that the language that the Coalition has suggested including in the preamble is an indication that the authorized review is not an administrative remedy. SBC Texas further explained that the CTPs and the municipalities disagreed as to whether an authorized review is an administrative remedy to be exhausted prior to filing suit on a failure to comply with access line reporting requirements. SBC Texas stated that the Legislature granted jurisdiction pursuant to Texas Local Government Code §283.058 to the commission over municipalities and certificated telecommunications providers necessary to enforce Texas Local Government Code Chapter 283 and to ensure that

all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner. SBC Texas maintained that the administrative remedies provided through the commission should be exhausted before municipalities seek judicial intervention.

Commission response

The commission acknowledges the filed comments of the parties on the issue of exhaustion of administrative remedies related to the application of municipal authorized reviews of access line reports pursuant to Local Government Code, Chapter 283. However, at this time, the commission declines to express comment on this issue but reserves the right to address it in the event of a subsequent relevant case, controversy or court decision.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Local Government Code §283.058, which grants the commission the jurisdiction over municipalities and CTPs necessary to enforce the whole of Chapter 283 and to ensure that all other legal requirements are enforced in a competitively neutral, nondiscriminatory, and reasonable manner.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and Texas Local Government Code §283.056 and §283.058.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501494
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION
SUBCHAPTER C. FEES

16 TAC §60.83

The Texas Department of Licensing and Regulation ("Department") adopts an amendment to an existing rule at 16 Texas Administrative Code, §60.83 regarding late renewal fees as it applies to individuals on active duty in the United States armed forces serving outside the state as published in the January 7, 2005, issue of the *Texas Register* (30 TexReg 15) with changes from the rule as proposed.

The amendment adds a new subsection (d) to comply with Texas Occupations Code, §55.002, which exempts individuals who hold a license issued by a state agency from increased fees or other penalties for failing to renew their license in a timely manner if they satisfactorily establish that the reason they failed to timely renew was because they were on active duty in the United States armed forces serving outside of the state. The licensee would be able to renew their license by paying the normally required renewal fee.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the *Texas Register* on January 7, 2005. The comment period closed on February 7, 2005. One public comment was received regarding the proposed rule.

The commenter applauded the Department for initiating the rule, and asked the Department to lengthen the time allowed for an exemption from a later penalty to two years, if the individual can prove they were on active duty. The commenter's point is well taken because Texas Occupations Code, §1305.167(d) allows for a late renewal of electrician licenses for up to two years after license expiration. In response to the comment, the phrase "and whose license has been expired for less than one year" is being replaced with "but is still within the late renewal period".

The amendment is adopted under Texas Occupations Code, Chapter 55 which requires state agencies to adopt rules to exempt military personnel who hold state licenses from incurring penalties or additional fees if they were on active duty in the armed forces and serving outside of the state and Texas Occupations Code, Chapter 51 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Chapter 55. No other statutes, articles, or codes are affected by the adoption.

§60.83. Late Renewal Fees.

(a) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the normally required renewal fee.

(b) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying a late renewal fee equal to two times the normally required renewal fee.

(c) A person paying a late renewal fee is not required to pay the normally required renewal fee.

(d) Pursuant to Title 2, Occupations Code, §55.002, an individual who fails to renew a license in a timely manner but is still within the late renewal period is exempt from the requirement to pay a late renewal fee if the individual furnishes to the department satisfactory documentation that the individual failed to renew the license in a timely manner because the individual was on active duty in the United States armed forces serving outside this state. An individual who is exempt from paying a late renewal fee under this subsection may renew the license by paying the normally required renewal fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501499

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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Proposal publication date: January 7, 2005
For further information, please call: (512) 463-7348

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CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.80, §66.82

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §66.80 and §66.82 regarding fees in the registration of property tax consultants program as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 995) without changes and will not be republished.

The amendments to §66.80 lower the original application fee for a property tax consultant from $100 to $50 and the original application fee for a senior property tax consultant from $150 to $75. The amendment to §66.82 lowers the fee for issuing a duplicate registration from $50 to $25. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the property tax consultants program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the *Texas Register* on February 25, 2005. The comment period closed on March 28, 2005. No comments were received regarding the proposed rules.

The amendments are adopted under Texas Occupations Code, Chapter 1152 and Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1152 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.70, 70.74, 70.101, 70.102

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§70.10, 70.70, 70.74, 70.101, and 70.102 regarding industrialized buildings as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 995). Section 70.10 is adopted with changes. Sections 70.70, 70.74, 70.101, and 70.102 are adopted without changes and will not be republished.

The rules were approved by the Texas Industrialized Building Code Council and are necessary to provide clarification in terminology, update references to various codes, and update the recertification process for industrialized buildings. Recertification has been a little used procedure, and the amendments to the recertification rules are designed to encourage greater use of the procedure, thereby facilitating greater use of existing buildings.

The amendment to §70.10 is necessary to add the definition of "construction documents," which is a term that will be used in the rules for greater consistency and clarity. The change to §70.10 is being made to paragraph (17) to correct an oversight. The reference in this definition refers to on-site construction as being paragraph (26) of this section. The correct reference for on-site construction is paragraph (27). This change has been made. The amendment to §70.70(c)(9) is necessary to refer to the correct article of the National Electrical Code.

The term "plans and specifications" has been replaced with the term "construction documents" throughout rule §70.74. The amendment to §70.74(c) clarifies that "ordinary" repairs shall not be considered alterations. The amendment to §70.74(d) clarifies that alteration decals are used to recertify industrialized buildings designed to be moved from one commercial site to another commercial site. The amendment to §70.74(e)(1) prohibits an industrialized builder or installation permit holder from changing the design review agency (DRA) used to review and approve alteration construction documents without approval from the Department and sets record retention requirements for all records pertinent to the alterations

The amendments to §70.74(f) accomplish the following: clarify that only industrialized buildings designed to be moved and that were previously certified under the Texas Industrialized Housing and Building (IHB) program may be recertified, require that a copy of the original data plate be submitted to the DRA with the alteration construction documents submitted for review and approval, clarify that repairs other than ordinary repairs are considered alterations, specify that the industrialized builder purchases alteration decals from the Department to affix to recertified modules, and specify that the alteration decals shall only be released to the third party inspection agency responsible for the alteration inspections.

Additional amendments to §70.74(f) define the types of industrialized buildings that may be recertified and the approval and inspection process for recertifying these buildings. The amendments to §70.74(f)(1) specify the requirements for recertification class 1, which applies to buildings that have not been previously altered and for which original approved construction documents exist. Section 70.74(f)(2) specifies the requirements for recertification class 2 buildings where original approved construction documents do not exist. Section 70.74(f)(3) specifies the requirements for recertification class 3 buildings where original approved construction documents exist, but the building has been altered from those documents. Section 70.74(f)(4) specifies the requirements for recertification class 4 buildings that have been previously recertified.

Section 70.74(f)(5) specifies the requirements for recertifying a building where emergency repairs (that do not qualify as ordinary repairs) to the building are necessary. Section 70.74(f)(6) specifies the plan approval requirements for recertification construction documents and requires the use of the Council's stamp of approval for altered or recertified buildings. Section 70.74(f)(7) sets the inspection requirements for recertifying industrialized buildings. The amendments to §70.74(g) clarify that the data plate is for recertification and alterations of industrialized housing and buildings.

The amendments to §70.101(d) amend section 101.2 of the International Building Code (IBC) to require that alterations be reviewed for compliance with the International Existing Building Code (IEBC). Section 70.101(i) amends the 2003 IEBC to replace the accessibility standards referenced in this code with the Texas Accessibility Standards, to delete chapter 10 (Historic Buildings) as not relevant, and to amend section 1201.2 to apply to structures existing prior to July 1, 2004 (adoption date of 2003 codes). The amendments to §70.102 require compliance with the mandatory building codes for new buildings for a building that has not been previously occupied or used for its intended purpose and compliance with the 2003 IEBC for recertification of existing industrialized buildings.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the *Texas Register* on February 25, 2005. The comment period closed on March 28, 2005. No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, and Texas Occupations Code, Chapter 1202.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Chapter 1202. No other statutes, articles, or codes are affected by the adoption.

§70.10. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alteration--Any construction, other than ordinary repairs of the house or building, to an existing industrialized house or building after affixing of the decal by the manufacturer. Industrialized housing or buildings that have not been maintained shall be considered altered.

(2) Alteration decal--The approved form of certification issued by the department to an industrialized builder to be permanently affixed to a module indicating that alterations to the industrialized building module have been constructed to meet or exceed the code requirements and in compliance with this chapter.

(3) Building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(4) Building system--The design and/or method of assembly of modules or modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(5) Chapter 1202--Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

(6) Closed construction--That condition where any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(7) Commercial structure--An industrialized building classified by the mandatory building codes for occupancy and use groups other than residential for one or more families. The term shall not include a structure that is not installed on a permanent foundation and either is not open to the public or is less than 1,500 square feet in total area and not used as a school or place of religious worship.

(8) Compliance Control Program--The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with Chapter 1202 and this chapter.

(9) Construction documents--The aggregate of all plans, specifications, calculations, and other documentation required to be submitted to the design review agency for compliance review to the mandatory building code.

(10) Component--A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(11) Decal--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with this chapter.

(12) Design package--The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted by the manufacturer to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.74.

(13) Design review agency--An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced by affixing the council's stamp. Chapter 1202 designates the department as a design review agency.

(14) ICC--International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

(15) Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale or lease to the public; a subcontractor of an industrialized builder is not a builder for purposes of this chapter.

(16) Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(17) Installation--On-site construction (see paragraph (27) of this section).

(18) Installation permit--A registration issued by the department to a person who purchases an industrialized house or building for his/her own use and who assumes responsibility for the installation of the industrialized house or building. A person who applies for an installation permit may not be engaged in the purchase of industrialized housing or buildings or of modules or modular components for sale or lease to the public. A subcontractor of an installation permit holder is not an industrialized builder for the purposes of this chapter.

(19) Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(20) Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(21) Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(22) Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(23) Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(24) Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(25) NFPA--National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(26) Nonsite specific building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(27) On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(28) Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(29) Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100, 70.101, and 70.102.

(30) Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(31) Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(32) Price--The quantity of an item that is exchanged or demanded in the sale or lease for another.

(33) Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(34) Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, builder, design review agency, third party inspection agency, or third party inspector.

(35) Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(36) Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property.

(37) Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(38) Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as handicapped accessibility or placement of the building on the property, which may need to be verified by the local building official for conformance to the mandatory building codes.

(39) Structure--An industrialized house or building that results from the complete assemblage of the modules or modular components designed to be used together to form a completed unit.

(40) Third party inspector--An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

(c) Where terms are not defined in this section or in other sections in this chapter and are defined in the mandatory building codes as referenced in §70.100, such terms shall have the meanings ascribed to them in these codes unless the context as the term is used clearly indicates otherwise. Where terms are not defined in this section or other

sections in this title or in the mandatory building codes, such terms shall have ordinarily accepted meanings such as the context implies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER CC. COMMISSIONER'S RULES ON CREDITABLE YEARS OF SERVICE

19 TAC §153.1021

The Texas Education Agency (TEA) adopts an amendment to §153.1021, concerning school district personnel. The amendment is adopted with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11870). The section addresses requirements regarding recognition of creditable years of service. The adopted amendment includes additions to the list of entities recognized for salary increment purposes and revisions to applicable definitions and provisions.

Effective February 1, 1998, the commissioner adopted 19 TAC §153.1021, Recognition of Creditable Years of Service, as authorized by the TEC, §21.403, 75th Texas Legislature, 1997. The provisions of law required the commissioner to adopt rules for determining the experience for which certain professional staff are to be given credit in placement on the state minimum salary schedule.

The existing rule concerning placement on the salary schedule applies only to teachers, librarians, counselors, and nurses. The rule provides appropriate definitions and explains required documents, necessary credentials, and the service record. The rule details the provisions for creditable years of service, including recognized employing entities for service credit.

The adopted amendment to 19 TAC §153.1021, Recognition of Creditable Years of Service, adds content and modifies existing language, as follows.

In subsection (a) relating to definitions, new paragraph (2) is added to include a definition for state recognized charter schools; subsequent paragraphs are reordered accordingly; paragraph (5), previously paragraph (4), is modified to reflect the correct name of the State Board for Educator Certification and to remove reference to a previous Texas Education Agency division; and a technical edit is made to paragraph (12), previously paragraph (11), regarding reference to the TEC. As proposed, paragraph (1) would have been modified to specifically distinguish a charter school as an accredited institution; however, agency legal counsel has determined that this separate distinction is not necessary as it is made clear later in the rule that an authorized charter school is a public school. In addition, technical edits were made in subsection (a)(2) to change the term being defined from "charter schools" to "charter school" and to remove the term "open-enrollment" since that only applies to TEC, Chapter 12, Subchapter D, and the definition applies to Subchapter D or E.

In subsection (d) relating to teacher service records, paragraphs (1), (3), and (5) are modified to include reference to charter schools. As proposed, paragraph (5) would have also been modified to allow districts and charters to withhold teacher service records until all debts are paid in full; however, in response to public comment, this change in paragraph (5) relating to withholding teacher service records has been deleted.

In subsection (g) relating to entities recognized for years of service, as proposed, new paragraph (2) would have been added to include charter schools as recognized entities for salary increment purposes and subsequent paragraphs reordered accordingly. However, after publication of the proposal, agency legal counsel determined that this separate distinction is not necessary. Reference to charter schools is now included in paragraph (1) along with Texas public elementary and secondary schools. Subsequent paragraphs retain their original numbering. In addition, a technical edit was made to this subsection since published as proposed. Paragraph (10) referenced Texas Department of Mental Health and Mental Retardation state hospitals. The reference was changed to update the reference as Texas Department of State Health Services state hospitals and state schools, consistent with the corresponding requirement listed in subsection (h).

In subsection (h) relating to requirements for entities recognized for professional personnel, new paragraph (2) would have been added to include recognized charter schools and specific related requirements and subsequent paragraphs reordered accordingly. However, after publication of the proposal, agency legal counsel determined that this separate distinction is not necessary. Reference to charter schools is now included in paragraph (1), with requirements specific to Texas public elementary and secondary schools shown in subparagraph (A) and requirements specific to charter schools shown in subparagraph (B). Subsequent paragraphs retain their original numbering. Paragraph (8) is modified by adding new subparagraph (F) relating to the Texas accredited private schools listing. Paragraph (9) is modified to reflect a change in the method to make information about non-public special education contract schools available. Paragraph (12) is modified to correct a cross reference to provisions in subsection (a) and to include reference to charter schools. Paragraph (13) is modified to add new subparagraph (E) relating to experience from private schools, colleges, and universities in foreign countries that have been accredited by a recognized accrediting entity. Also in paragraph (13), minor editorial corrections are made in subparagraphs (B) and (C). An accrediting entity of the foreign country must be either the Department of Education or the Higher Education Authority of that country.

Approval of experience from accredited private schools, colleges, and universities in a foreign country will be considered on an individual country basis depending on the relevant information provided by public officials of the foreign accrediting entity to the Texas Education Agency. It is the responsibility

of the foreign country to provide such relevant, credible, and accurate information before any credit is given.

Many teachers gain valuable experience living abroad due to the fact that their spouses are in the U.S. military. While the rule currently gives salary schedule credit for teachers working for a school operated by the U.S. government or public schools, many teachers are denied such credit if their work experience was in a private school setting that was accredited by the country in which the school is located, but not accredited by an accrediting agency listed under 19 TAC §153.1021. Therefore, the rule action revises the rule and recognizes teaching experience from appropriately accredited foreign private schools, colleges, and universities.

In addition, a technical edit was made to subsection (h) since published as proposed. Paragraph (10) referenced Texas Department of Mental Health and Mental Retardation state hospitals and state schools. The reference was changed to update the reference as Texas Department of State Health Services state hospitals and state schools.

In subsection (k) relating to substitute teachers, a minor technical edit is made to the school year referenced.

New subsection (m) is added relating to teacher aides to reflect teacher aide experience that may qualify the individual for up to two additional years on the minimum salary schedule. The new language in subsection (m) facilitates the goal of providing an incentive for teacher aides to become certified teachers by allowing some credit for experience as a teacher aide providing direct instruction to students. Teacher aides already have a good understanding of what is required to be a classroom teacher and are thus more likely to continue in the teaching profession than other beginning teachers.

The following is a summary of public comments received on the proposed amendment to 19 TAC §153.1021 and corresponding agency responses.

Comment. The Texas Classroom Teachers Association (TCTA) expressed support for the proposed amendment to subsection (h)(14)(E) providing for experience in foreign schools that are accredited by the accrediting agency of the foreign country. The TCTA commented that teachers living abroad may have obtained valuable experience working in such schools. The TCTA stated that spouses of military service personnel may have obtained service working in schools overseas that are accredited by the country in which they are located, and this change would be a benefit to those military families.

Agency response. The agency agrees.

Comment. The TCTA expressed support for the addition of subsection (m), which provides up to two years of instructional experience for time spent in full-time instruction as a teacher aide. The TCTA recommended this change as a way to encourage qualified paraprofessional personnel to seek certification as teachers and to recognize some of the valuable experience obtained while already serving in the classroom.

Agency response. The agency agrees.

Comment. The TCTA strongly opposed the addition to subsection (d)(5) that would allow school districts or charter schools to withhold service records until all debts to the school are paid in full. The TCTA commented that this provision is unrelated to the statutory authority given to the commissioner to adopt "rules for determining the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule." The TCTA commented that the proposed rule exceeds the statutory authority for the commissioner to adopt rules on this subject. The TCTA stated that the inclusion of such a rule would allow school districts to keep professional employees from obtaining a job in another district if the school district's personnel believed the employee owed the district a debt. The TCTA further stated that such employees would thus be deprived of the ability to obtain gainful employment in their profession without the opportunity for due process of law. The TCTA commented that the proposed rule language is functionally equivalent to an illegal garnishment of wages and self help, citing Benton v. Wilmer-Hutchins I.S.D., 662 S.W.2d 696 (Tex.App. - Dallas 1983; overruled on other grounds in Orange County v. Ware, 819 S.W.2d 472, 474 (Tex. 1991)). The TCTA noted that if a school district believes it is owed a debt, it should have the burden of proof to show that such a debt exists and be required to pursue the legal remedies available for creditors.

Agency response. The agency agrees that the proposed amendment is beyond the scope of the commissioner's statutory authority and has deleted the proposed language.

The amendment is adopted under the Texas Education Code, §21.403, which authorizes the commissioner of education to adopt rules for determining the experience for which a teacher, librarian, counselor, or nurse is to be given credit in placing the teacher, librarian, counselor, or nurse on the minimum salary schedule.

The amendment implements the Texas Education Code, §21.403.

§153.1021. Recognition of Creditable Years of Service.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accredited institution--A public or private elementary, secondary, or post-secondary institution whose education program has been evaluated and deemed accredited by a state department of education or recognized regional accrediting agency.

(2) Charter school--A charter school that has been authorized to operate under the Texas Education Code (TEC), Chapter 12, Subchapter D or E.

(3) Assignment--Refers to the actual duties a person has with a school district or other educational entity.

(4) Authorized leave--Leave granted under the state's former minimum sick leave program, leave granted under the state's current minimum personal leave program (which includes physical assault leave), or any leave granted under a local leave policy for which the employee is paid as if on regular duty.

(5) Certificate--A document issued by the State Board for Educator Certification authorizing the holder to teach in the public elementary and secondary schools of Texas.

(6) Certified--Status of a person who holds a valid Texas teaching certificate.

(7) Contractual year--The employment period between July 1 and the following June 30.

(8) Current valid certificate--A certificate that is or was valid at a given time, including the stipulation that after June 30, 1986,

a Texas certificate is valid only if the certified person has successfully passed either the Texas Examination of Current Administrators and Teachers or the Examination for Certification of Educators in Texas.

(9) Faculty status--Employment by a college or university as a member of the professional administrative or instructional staff, not as a graduate assistant, an assistant instructor, or an instructor on a fellowship.

(10) Full-time employment--Employment for 100% of an institution's normal work schedule.

(11) Full-time equivalency--The amount of time required of a staff member to perform a less than full-time assignment divided by the amount of time required in performing a corresponding full-time assignment. Full-time equivalency of assignment usually is expressed as a decimal fraction to the nearest tenth.

(12) Minimum salary--The minimum salary a teacher, full-time librarian, full-time counselor, or full-time school nurse must be paid as prescribed in TEC, Chapter 21.

(13) Part-time employment--Employment for less than 100% of an institution's normal work schedule.

(14) Professional personnel--Teachers, full-time librarians, full-time counselors, full-time school nurses, other employees who are required to hold a certificate issued under TEC, Chapter 21, Subchapter B, and any other personnel reported by a school district to the Public Education Information Management System with a "professional" role-id.

(15) Regional accrediting agency--The recognized regional accrediting agencies are:

(A) Southern Association of Colleges and Schools;

(B) Middle States Association of Colleges and Schools;

(C) North Central Association of Colleges and Schools;

(D) New England Association of Schools and Colleges;

(E) Western Association of Schools and Colleges;

(F) Northwest Association of Schools and Colleges;

(G) Commission on International and Trans-regional Accreditation;

(H) International Baccalaureate Organization;

(I) European Council of International Schools/Council of International Schools; and

(J) National Council for Private School Accreditation.

(16) Salary increments--Increases in salary granted for teaching or work experience.

(17) School nurse--An educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice, and who has been issued a license to practice professional nursing in Texas.

(18) Service--A term of employment measured in school years in an entity in which the employment is recognized for salary increment purposes.

(19) State school--A school that is funded by legislative action in the appropriations act. These schools include the Texas School for the Blind, the Texas School for the Deaf, and schools under the jurisdiction of the Department of Mental Health and Mental Retardation and the Texas Youth Commission.

(20) Substitute teacher--A certified teacher who works on call, does not have a full-time assignment, and provides instruction.

(21) Teacher service record--The official document used to record years of service and days used and accumulated under the states former minimum sick leave program or the state's current personal leave program.

(b) Required documentation. The following records on professional personnel must be readily available for review.

(1) credentials (certificate or license);

(2) service record(s) and any required attachments;

(3) contract;

(4) teaching schedule or other assignment record; and

(5) absence from duty reports.

(c) Credentials for professional personnel. The credentials for professional personnel are as follows.

(1) A current valid Texas certificate, a special assignment permit, a nonrenewable permit, a non-certified instructor's permit, an emergency teaching permit, or the appropriate licensure from the State of Texas.

(2) For special education related service teachers, the credential must be appropriate licensure from the State of Texas.

(3) For those special education related service personnel who do not require Texas certification or licensure, proper credentials as described in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) are required.

(d) Teacher service record. The basic document in support of the number of years of professional service claimed for salary increment purposes and both the state's sick and personal leave program data for all personnel is the teacher service record (form FIN-115) or a similar form containing the same information. It is the responsibility of the issuing school district or charter school to ensure that service records are true and correct and that all service recorded on the service record was actually performed.

(1) The service record must be validated by a person designated by the school district or charter school to sign service records.

(2) Supporting documents are required for service in out-of-state private schools, foreign public and private institutions, the military, and colleges and universities. The type of supporting documentation for each particular entity is prescribed by subsection (h) of this section.

(3) If a person is employed by more than one school district or charter school during the same school year, a service record from each employing district or charter school is required.

(4) For personnel employed in a year-round school system, the actual dates of employment during that school's calendar must be indicated on the service record. The dates may not necessarily conform to the contractual year as defined by subsection (a) of this section.

(5) The service record shall be kept on file at the school district or charter school. When employment with the district or charter school is terminated, the original service record, signed by the employee shall be given to the employee upon request or sent to the next

employing school district or charter school. The local school district or charter school must maintain a legible copy for audit purposes.

(6) Cooperative personnel employed by a fiscal agent/manager and itinerant personnel of a cooperative shall be considered to be employees of the fiscal agent/manager and the service record shall be the fiscal agent/manager's responsibility. Personnel employed by a member of a cooperative and assigned to the member are employees of the member and the service record shall be the member's responsibility.

(7) Work experience claimed by career and technology education personnel for salary increment purposes as prescribed by subsection (i) of this section must be recorded on a service record.

(8) State sick leave balances, days earned, and days used by personnel under the former state's minimum sick leave program and the state's current personal leave program must be recorded on the service record or another similar form containing the same information. State sick leave or state personal leave accumulated in Texas public elementary and secondary schools is transferable among these schools. Sick leave accrued by an employee of a Texas regional education service center, not to exceed five days per each year of employment, is transferable to a Texas public elementary and secondary school. Local leave accrued under the policy of any entity recognized for creditable service under subsection (g) of this section may be transferred to a Texas public elementary or secondary school at the discretion of the employing school district. The service record shall separately state the number of accumulated state days for which the employee is paid, if any, upon separation from the employing district.

(e) General provisions for years of creditable service. All service claimed for salary increment purposes must meet the requirements in subsections (f) - (h) of this section. The service record and any other required supporting documents must meet the requirements for such records and documentation in this section. All service shall be based on the contractual year (July 1 - June 30). No more than one year of experience may be acquired in any one contractual year.

(f) Minimum requirements. The table in this subsection indicates the minimum number of days required to earn and receive credit for a year of experience.
Figure: 19 TAC §153.1021(f) (No change.)

(1) For service performed through the 1989 - 1990 school year, minimum days at less than 100% or at full-time equivalency are applicable only to service in Texas public schools, Texas education service centers, and, beginning in 1978 - 1979, Texas public colleges and universities.

(2) Beginning with service performed during the 1990 - 1991 school year or any year thereafter, employment at less than 100% of the day is recognized in all entities where full-time employment is recognized, provided that documentation is presented to the employing district which verifies that the employment was for not less than three and one-half hours each day.

(3) The 90 days required at 100% of the day for years prior to 1972 - 1973 may be equivalent to four and one-half months, a full semester, or three six-weeks. Where the school year was less than 180 days for any year prior to 1972 - 1973, a minimum of 175 days at 50 - 99% of the day will be accepted, provided that the 175 days constituted two full semesters or six six-weeks.

(4) For experience from the 1978 - 1979 through the 1987 - 1988 school years, full-time equivalent days equal the total number of days employed at 100% of the day plus days employed at 50 - 99% of the day divided by two.

(5) Beginning with the 1988 - 1989 school year, full-time equivalent days equal the total number of days employed multiplied by the percent of day actually worked.

(6) Beginning with the 1998 - 1999 school year, the 90 days required at 100% of the day may be equivalent to four and one-half months or a full semester. The 180 days required at 50 - 99% of the day may be equivalent to 90 full-time equivalent days (percent of day employed multiplied by number of days employed).

(7) Extended day migrant program employment shall be calculated in accordance with this section and the resulting equivalent must meet the same minimum requirements for professionals for the year in question.

(A) For service prior to the 1970 - 1971 school year, the days employed in the migrant program shall be multiplied by a factor of 1.37.

(B) For service during the 1970 - 1971 through the 1975 - 1976 school years, the days employed in the migrant program shall be multiplied by a factor of 1.31.

(g) Entities recognized for years of service. Service in any of the entities listed in this subsection shall be recognized for professional personnel. The minimum employment requirements in subsection (f) of this section must be met. Requirements concerning service in each type of entity in subsection (h) of this section must also be met. Professional service in the following entities is creditable:

(1) Texas public elementary and secondary schools, including charter schools;

(2) State regional education service centers;

(3) State departments of education;

(4) Texas Department of Corrections--Windham Schools;

(5) Public elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(6) Overseas schools operated by the U.S. Government;

(7) Texas public or private colleges or universities;

(8) Texas private elementary and secondary schools;

(9) Texas non-public special education contract schools;

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation)--state hospitals and state schools;

(11) Texas veterans' vocational schools;

(12) Public or private colleges or universities and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions;

(13) Foreign public or private colleges or universities, or elementary and secondary schools;

(14) U.S. Department of Interior--Bureau of Indian Affairs;

(15) U.S. service academies;

(16) U.S. military service;

(17) Job Corps; and

(18) Peace Corps (in a professional capacity only).

(h) Requirements. Requirements for entities recognized for professional personnel are as follows:

(1) Texas public elementary and secondary schools, including charter schools.

(A) Requirements specific to Texas public elementary and secondary schools.

(i) All professional personnel must be certified by the State of Texas, must hold the proper state or national licensure as required by the position held, or must have the educational requirements for the job assigned. Regardless of the funding source, teachers, full-time librarians, full-time counselors, and full-time school nurses must be paid at least the minimum salary specified in the Texas State Public Education Compensation Plan.

(ii) Professional personnel placed on developmental leaves of absence must be paid at least one-half of their state minimum salary by the school district to receive service credit for increment purposes.

(iii) Instructors in Reserve Officer Training Corps (ROTC) programs conducted by local school districts must be certified or hold an emergency teaching permit and must be paid at least the state minimum salary to receive service credit for increment purposes. An emergency teaching permit need not be renewed as long as the person continues in the ROTC assignment.

(B) Requirements specific to charter schools.

(i) Employment must have been in a professional capacity as defined by subsection (a) of this section.

(ii) Texas charter schools are not required to hire certified teachers other than those in special education and bilingual education, or as stated in the charter application.

(2) State regional education service centers.

(A) Personnel employed in cooperatives for which the education service center is acting as fiscal agency must meet the same requirements as personnel employed in Texas public elementary and secondary schools.

(B) All other personnel must meet the same requirements as personnel employed in state departments of education.

(3) State departments of education. Employment must have been in a professional capacity. For Texas department of education employment, professional positions are defined as personnel employed in positions starting in state pay grade classification B4/A12 and above.

(4) Texas Department of Corrections--Windham schools. Requirements in this subsection shall apply.

(5) Public elementary and secondary schools in all other states of the United States or within the boundaries of any of its territorial possessions. Employment prior to 1990 - 1991 must have been on a full-time basis.

(6) Overseas schools operated by the U.S. government. Schools operated by the United States Government for military dependents and dependents of personnel assigned to an embassy, consulate, etc., are treated as public schools in other states of the U.S. and policies pertaining to public schools in other states apply.

(7) Texas public or private colleges or universities.

(A) Officer Training Corps programs conducted by accredited colleges or universities must have been employed full-time on a faculty status level. Beginning in 1998 - 1999, service as an instructor in an agricultural extension service operated by an accredited college or university may be recognized for salary increment purposes as long as the person held a valid Texas teaching certificate at the time the service was rendered.

(B) All college or university experience must be recorded on the teacher service record. A supporting letter or form must be attached to the teacher service record verifying that either the full-time or part-time employment was at faculty status or its equivalent and that the schedule of work and the pay constituted that of other similar faculty employees. It is the responsibility of the employing school district to secure verification of college or university experience.

(8) Texas private elementary and secondary schools.

(A) For experience prior to the 1986 - 1987 school year, accreditation by the Texas Education Agency or the Southern Association of Colleges and Schools is required.

(B) For experience in the 1986 - 1987, 1987 - 1988, and 1988 - 1989 school years, service shall be acceptable if the school was accredited by the Texas Education Agency, or a recognized regional accrediting agency.

(C) For experience in the 1989 - 1990 school year and thereafter, service shall be acceptable if the school was accredited by the Texas Private School Accreditation Commission.

(D) During the 1986 - 1987, 1987 - 1988, and 1988 - 1989 school years, private schools accredited by the Texas Education Agency, a recognized regional accrediting agency, or an association recognized by the commissioner of education will be listed in the Texas School Directory.

(E) Beginning with the 1989 - 1990 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed in the Texas School Directory.

(F) Beginning with the 2004 - 2005 school year and thereafter, private schools accredited by the Texas Private School Accreditation Commission will be listed on the Texas Education Agency website.

(9) Non-public special education contract schools.

(A) Approval from the Texas Education Agency to provide special education services during the year service was rendered is required. A list of approved schools is maintained by the Texas Education Agency and posted on the agency's school finance website.

(B) The person must have been certified in an area of special education.

(10) Texas Department of State Health Services (formerly the Texas Department of Mental Health and Mental Retardation) state hospitals and state schools.

(A) The assignment must have been in an educational program operated in conjunction with a public school program or in a non-educational professional capacity.

(B) Persons employed in an educational program must have held a valid Texas teaching certificate and must have been paid at least the state minimum salary of a teacher in a Texas public school.

(11) Texas veteran's vocational school.

(A) The assignment must have been as an instructor or coordinator.

(B) Service during the period of July 1, 1946, through June 30, 1955, must have been at a school under the jurisdiction of the Texas Education Agency (this service can be verified by the agency).

(C) Service after June 30, 1955, must have been at a veteran's vocational school operated by a Texas county board of school trustees under the jurisdiction of the Veterans Administration.

(12) Public or private colleges and universities, and private elementary and secondary schools in all other states in the United States or within the boundaries of any of its territorial possessions.

(A) Employment must have been, and in the case of colleges and universities, must be verified in the same manner as for Texas colleges or universities.

(B) Accreditation by a recognized state or regional accrediting agency listed in subsection (a)(15) of this section is required. In states or territories that have no provisions for accrediting, licensing, or approving private elementary or secondary schools, service shall be acceptable provided the person held, while employed, a valid teaching certificate from the state in which the school is located or a valid Texas teaching certificate.

(C) It is the responsibility of the employing school district or charter school to have evidence on file of the accreditation status of private schools in other states.

(13) Foreign public or private elementary and secondary schools, colleges, and universities.

(A) Employment in colleges or universities must be verified in the same manner as for Texas colleges or universities.

(B) For foreign public schools, colleges, and universities, accreditation by a recognized agency of the foreign country or by a recognized accrediting agency in the United States is required.

(C) For foreign private schools, colleges, and universities, accreditation must be by a recognized regional accrediting agency listed in subsection (a)(15) of this section, unless the requirements in subparagraph (E) of this paragraph are met.

(D) The accreditation status must be verified in the same manner as for public or private schools in the United States.

(E) Experience from foreign private schools, colleges, and universities that have been accredited by a recognized accrediting agency of the foreign country may be recognized for salary increment purposes, provided the minimum requirements in subsection (f) of this section are met. All relevant and credible information concerning accreditation must be provided to the Texas Education Agency. The recognized accrediting entity in the foreign country is the Department of Education or the Higher Education Authority of that foreign country. It is the responsibility of the foreign country to provide such relevant, credible, and accurate information before any credit is given. Such experience will be considered on an individual country basis. The placement on the minimum salary schedule will begin with the following contractual year (July 1 - June 30) after the final approval is granted by the Texas Education Agency. The district or charter school is not liable for any previously non-compensated salary related to such experience.

(14) United States Department of the Interior--Bureau of Indian Affairs. Service must have been full-time.

(15) United States service academies.

(A) Employment must have been at a faculty status level and must be verified in the same manner as other college or university service.

(B) The service academies are as follows:

(i) Air Force Academy, Colorado Springs, Colorado;

(ii) Coast Guard Academy, New London, Connecticut;

(iii) Military Academy, West Point, New York;

(iv) Naval Academy, Annapolis, Maryland; and

(v) Merchant Marine Academy, Kings Point, New York.

(16) United States military service. Service with the military forces of the United States of America may be counted for salary increment purposes if the following conditions are met:

(A) The person was a professional employee of any entity recognized for creditable service for salary increment purposes within twelve months of entry into active duty.

(B) Form DD-214 or other official discharge papers must be filed with the teacher service record showing:

(i) that military service was in the capacity of an enlisted man or woman or commissioned officer;

(ii) that release or separation from active duty was under honorable conditions; and

(iii) dates of entry and release from active duty.

(C) The person claiming military service was on active duty during the periods September 1, 1940, through August 31, 1947, or September 1, 1950, through August 31, 1954, or for other periods if:

(i) the military service was a result of involuntary induction into active duty; or

(ii) the military service was a result of voluntary entry into active duty for the first time for the individual, and such initial period of voluntary military service claimed as years of service for teacher salary increments does not exceed four years.

(D) Beginning with the 1983 - 1984 school year, for purposes of determining the total years of military experience creditable for increment purposes, a year shall be considered to begin on July 1 and end June 30. During this period, four and one-half months of service must be acquired for an individual to be entitled to one year of experience. Only one year of experience may be earned during any 12-month period. Prior to the 1983 - 1984 school year, credit for military service was calculated based on the 12-month period from September 1 - August 31. Credit granted on that basis shall continue to be effective.

(17) Job Corps. The person must have held a valid teaching certificate or appropriate license that would qualify for service credit during the period of employment.

(18) Peace Corps.

(A) Employment must have been with a school system (Grades K - 12) in a foreign country.

(B) The person must have held a valid teaching certificate or appropriate license that would qualify for service credit from any state in the United States during the period of employment.

(i) Credit for career and technology teachers. In accordance with TEC, §21.403, effective with the 1982- 1983 school year, certified career and technology education teachers employed for at least 50% of the time in an approved career and technology position may count up to two years of work experience for salary increment purposes if the work experience was required for career and technology certification.

(1) For purposes of this section, an emergency teaching permit shall be the equivalent of a teaching certificate.

(2) Once credit for work experience has been granted, the credit shall be continued regardless of the position held. For personnel granted credit under this section whose employment is split between career and technology and non-career and technology positions, the years granted shall apply to both the career and technology and the non-career and technology positions.

(j) Adult basic education program credit. A person teaching adult basic education is eligible for creditable service if the program was operated by a public school and the person held a valid teaching certificate.

(k) Substitute teachers. Beginning with the 1998 - 1999 school year, a substitute teacher, as defined in subsection (a) of this section, employed in an entity recognized for years of service as prescribed by subsection (g) of this section is eligible for creditable service.

(l) Salary schedule. The commissioner of education shall publish annually the state minimum salary schedule.

(m) Teacher aides. Beginning with the 2004 - 2005 school year, a teacher aide who subsequently attains certification may count up to two years of full-time equivalency of direct student instruction for salary increment purposes. Such experience must be verified on the teacher service record form (FIN-115) or a similar form containing the same information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501542
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 182. USE OF EXPERTS

22 TAC §182.7

The Texas State Board of Medical Examiners adopts new §182.7, Interim Appointment, without changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1216) and will not be republished. The new rule concerns the use of Executive Committee members to make interim appointments of expert panelists until the next board meeting.

During the two-month interval between meetings of the Medical Board, expert panelists with specialty qualifications may be needed as part of a case investigation. Interim appointments to the Expert Panel by a member of the Executive Committee and follow-up ratification by the Medical Board will prevent cases from going beyond the statutory investigatory timeline.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Occupation Code Annotated, §153.001 and §154.056(e), which provide that the Texas State Board of Medical Examiners may adopt rules and bylaws as necessary to perform its duties, regulate the practice of medicine in this state and enforce the Medical Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501587
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: May 5, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 305-7016

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PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 595. COMPLIANCE AND ENFORCEMENT

22 TAC §595.1

The Texas Structural Pest Control Board adopts an amendment to §595.1, concerning License Display with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11882). The only change was made to correct the language for the official name of the state health department.

Justification for the rule is that the adoption clarifies the distinction between the actual licenses and the license cards that are issued to licensees and to reflect the Board's current practice of verifying license cards in the field. This requirement also allows Texas Department of Agriculture and Department of State Health Services staff to verify licenses upon request. The other change will reflect the current board practice of issuing suffix letter for branch license identification and requires branch offices to display branch designation on vehicles. Words were also removed and rearranged to make sentence read better or eliminate redundancy. A clearer definition of management vehicle was also added.

The rule will function in reflecting the correct statutory language. The rule change also supports identification of Board licensees to other state agencies. The practice of adding a suffix will help with branch identification. A clearer definition of management vehicle was also added.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.1. License Display.

(a) All structural pest control licenses must be displayed in a conspicuous place at the business of the license holder. In the case of

a nonresident license holder, the license must be displayed in a conspicuous place at the residence or at the place of business of the license holder's resident agent. All structural pest control licenses must be presented for visual inspection to a customer or to Board, Texas Department of Agriculture, or Department of State Health Services staff upon request. A licensee must also carry a license card while engaged in structural pest control work.

(b) The business license number and suffix letter must be prominently displayed on all vehicles used in the company business. The business license number and suffix letter shall not be required on unmarked management vehicles. Company vehicles may have more than one license number if a written request is made to the Board and the Board approves the request. The numbers and letters must be permanently affixed to the vehicle in a prominent place on each front fender and/or front door panel in two-inch letters in a color which would contrast to the background color of the truck or vehicle and shall be designated as: Texas Pest Control License (number). This may be abbreviated to TPCL (number). Any numbers, letters or symbols that adhere to vehicle by way of magnetic device are not considered to be permanently affixed. Management vehicle is defined as a vehicle not used to perform sales, or provide service to customers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501571
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.2

The Texas Structural Pest Control Board adopts an amendment to §595.2, concerning Employee Registration without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11883).

Justification for the rule is that it clarifies the regulations by the addition of the number to provide consistency with how other numbers are presented in the regulations. The term "certified applicator" was added for consistency with licensing practices. The word "Texas" added to Structural Pest Control Board to reflect name as designated by the legislature. Finally, the 30 days was changed to 10 days to provide consistency with §595.2(b) and eliminates the conflict with §593.6 referring to when changes must be made.

The rule will function in reflecting the correct statutory language. The rule change also supports the same time lines for registrations.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501572
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.3

The Texas Structural Pest Control Board adopts an amendment to §595.3, concerning Employee Supervision with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11884). The changes are grammatical in nature.

Justification for the rule is that the rule now reflects new technology by requiring employers to supervise their employees use of devices as well as pesticides now.

The rule will function by reflecting employers supervise employees in the use of pest control devices. Clarity is also offered by using letters and numbers to reflect the meeting requirements with technicians and apprentices.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.3. Employee Supervision.

(a) The responsible certified applicator is responsible to supervise the use of pesticides and devices by employees of a pest control business.

(b) In order to provide adequate supervision, a certified applicator must be physically present to give personal instructions to a technician or apprentice at least three (3) days a week with the technician or apprentices being supervised. The technician or apprentice must reside within the normally accepted commuting area of the licensed business office or work location and must personally report to a certified applicator at least three (3) days a week to receive instructions.

(c) Employees may not schedule and perform pest control work unless instructions for the type of work to be done are obtained from a certified applicator.

(d) Apprentices must not perform pest control services without physical supervision until they have completed all classroom training, on-the-job training required and verified such completion in their records.

(e) The business license holder or certified noncommercial applicator is responsible for actions of employees when they are performing pest control services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501573
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.4

The Texas Structural Pest Control Board adopts an amendment to §595.4, concerning Pest Control Use Records with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11884). The changes are grammatical in nature.

Justification for the rule is that the rule now reflects more accurate record keeping due to the changes in technology in the industry.

The rule will function by reflecting the use of more appropriate unit of measurement for the use of a pesticide. The rule also now includes the measurement in the use of devices.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.4. Pest Control Use Records.

The business licensee or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate record of all uses of pesticides and pest control devices registered with the United States Environmental Protection Agency and the Texas Department of Agriculture or approved by the Board under §599.1 of this title for a period of two (2) years. Said records must be kept on the premise of the business licensee or, in the case of a certified noncommercial applicator, the employer's premises. The records must include, but are not limited to, routine operational data, name and address of the customer, name of pesticides or devices used, total amounts of each pesticides or devices used, percent of active ingredient applied, purpose for which the pesticides or devices were used or target pest, date the pesticides or devices were used, service address where the pesticides and devices were used, and the name of the person(s) applying pesticides or using devices. If a physical device approved by the Board is used, the appropriate unit of measurement (square foot, cubic foot, or linear foot) of the physical device must be recorded and a diagram describing the installation will be provided. These records shall be made available to the Board or its authorized agents in accordance with the Texas Structural Pest Control Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501574
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.5

The Texas Structural Pest Control Board adopts an amendment to §595.5, concerning Contracts without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11885).

Justification for the rule is that the rule now allows licensees to list a mailing address on billing information.

The rule will function by permitting licensees to list a mailing address on billing information. This will not affect the general public or the Board staff from contacting licensees at their place of business because that information is already on file with the Board and can be made available upon request. The font change reflects advances in technology because most word processing programs do not go smaller than an 8 point font.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501575
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.6

The Texas Structural Pest Control Board adopts an amendment to §595.6, concerning Pest Control Sign without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11885).

Justification for the rule is that the changes reflect updating the contact agency for pesticide information and improving the grammar of the regulation.

The rule will function by updating the contact agency for pesticide information and improving the grammar of the regulation.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501576
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.7

The Texas Structural Pest Control Board adopts an amendment to §595.7, concerning Consumer Information Sheet without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11886).

Justification for the rule is that the changes reflect the addition of numbers to provide consistency with how numbers are noted in the regulations. Grammar was improved by replacing "shall" with "must" and added "Texas" to "Structural Pest Control Board" to reflect full agency name.

The rule will function by improving the grammar of the regulation.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501577
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.8

The Texas Structural Pest Control Board adopts an amendment to §595.8, concerning Responsibilities of Unlicensed Persons for Posting and Notification without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11887).

Justification for the rule is that the change reflects codification of the Texas Structural Pest Control Act. Grammar was improved by replacing "shall" with "must".

The rule will function by improving the grammar of the regulation and providing the correct statutory information.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501578
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.10

The Texas Structural Pest Control Board adopts an amendment to §595.10 concerning Inspections with one change to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11888). The change reflects the current name for the former Texas Department of Health's new name to the Department of State Health Services.

Justification for the rule is that the change reflects codification of the Texas Structural Pest Control Act and the name change of the former Texas Department of Health.

The rule will function by correctly reflecting the current statutory authorities.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.10. Inspections.

(a) Each licensed pest control business shall be inspected at least one time every two years. Businesses showing a lack of compliance with Board law or rules may be inspected more frequently. The Executive Director may waive this requirement due to emergency. An emergency in this section is defined as a shortage of staff availability due to complaint investigations, personnel shortages, or budgetary constraints.

(b) If the Board or the Executive Director determines that a misapplication of pesticides has occurred on the premises of a consumer, the consumer and the business license holder or applicator must be notified within 20 calendar days of the making of this determination. Records of any health injuries diagnosed by a licensed physician and property damage caused by any misapplication by a licensee which is found by the Board shall be kept in a form reportable to the Department of State Health Services or any institution of higher education upon their request.

(c) Procedures for the conduct of an investigation shall be contained in the Texas Structural Pest Control Board Investigations Manual, which shall contain all requirements of the Texas Structural Pest Control Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501579
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.11

The Texas Structural Pest Control Board adopts an amendment to §595.11 concerning Schools with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11889). These changes are grammatical in nature.

Justification for the rule is that the change reflects codification of the Texas Structural Pest Control Act and the name change of the former Texas Department of Health.

The rule will function by correctly reflecting the current statutory authorities and state agencies.

Comments were received at the Board meeting held on January 11, 2005. Comments were received both orally and written from the Texas Cooperative Extension. Comments and Responses are as follows.

Comment: The Texas Cooperative Extension on §595.11(a)(1) proposed the following language change "Insect and rodent baits in tamper-resistant containers or bait stations that are on the Green List, or non-containerized baits or gels that are on the Green List may be applied at any time if students are not present in the room ..." The reason for the Extension's proposal is that the regulations as currently written pose an unnecessary health risk for some children. The class of botanical insecticides includes chemical compounds that vary both in toxicity and their ability to serve as respiratory irritants for children and others. School IPM coordinators recently surveyed on this issue indicated that they rarely take advantage of this exemption and would favor such a change. On the other hand, some IPM coordinators and pest control applicators feels this could limit their choices. The results were split on this issue.

Response: The proposed language is accepted.

Comment: The Texas Cooperative Extension on §595.11(h)(1) proposes adding soaps and oils (natural or synthetic) to Green Category pesticides. The Extension's reason is that soaps and oils are universally recognized as safer pest control tools for horticultural applications due to their physical, rather than biochemical modes of action. A typical insecticide soap has an LD50 of 16,500 mg/Kg1, and a typical horticultural oil has an LD50 of >5,000 mg/Kg2. These products, or products very similar, are currently used for many other applications in schools, including dishwashing and, in the case of vegetable oils, cooking. School IPM coordinators and pest control professionals overwhelmingly support these additions, they thought this was a great idea.

Response: The proposed language is accepted.

Comment: The Texas Cooperative Extension on §595.11(h)(1) proposes that all Green Category products to bear a CAUTION signal word. The basis for the change is to close a loophole that currently allows use of potentially dangerous products under the guise of a "Green List" product. This requirement was eliminated in 1996 to permit some of the insect growth regulators on the Green List, a move that the pest control industry at the time supported. Since this time, however, newer formulations have been developed that resulted in most IGR products now bearing CAUTION signal words. IPM Coordinators overwhelmingly support this change.

Response: The proposed language is accepted.

Comment: The Texas Cooperative Extension recommends the use throughout §595.11 that the terms Red List, Yellow List and Green List throughout the school IPM regulations to Red Category, Yellow Category and Green Category. The basis for this change is that the term "list" is confusing to almost everyone who encounters it for the first time. Close reading of the current regulations make it clear that there is no maintained listing of approved pesticides for schools. This interpretation of the law has never been challenged by industry or environmental advocates because of a general recognition that maintaining such a list would be costly and impractical. Changing the term list would significantly clarify the regulations for school IPM coordinators and others. School IPM coordinators favor such a change in our survey. Some of the comments were this would take some of the confusion out of the regulations.

Response: The proposed language change cannot be accepted because Occ. Code §1951.212 specifies the use of the word "list", not "category."

Comment: The Texas Cooperative Extension recommends making CEU requirements mandatory for school IPM Coordinators. The basis of the recommendation is that Integrated Pest Management is an information-intensive activity, and overseers of IPM programs should be well trained. The mandatory six-hour training course is insufficient to give coordinators the tools they need to make sound IPM decisions for their entire careers. School IPM coordinators we surveyed support this change. The majority of comments stated that it should be every year, not every three. That they try to attend training every year, but this would give them the support to make those trainings.

Response: The Board rejects instituting the proposed requirement because of the additional financial requirements it places upon school districts.

Comment: The Texas Cooperative Extension recommends clarifying the term "site", used in §595.11(h)(2)(3) to mean a particular school campus. The basis for this recommendation is that the term "site" in the current regulation is ambiguous and subject to inconsistent interpretations by field inspectors. This leads to confusion and frustration among IPM coordinators and pest control professionals. This change in wording reflects the most commonly adopted position of the SPCB legal counsel on the definition of "site". These changes would also ensure the Justification Use Records were completed accurately.

Response: The Board does not believe the proposed change is necessary since the language of the regulation is clear.

Comment: The Texas Cooperative Extension recommends changing the wording on the current Notice of Pest Control Treatment to refer to Pest Control Service. The proposal would have the current sign using the word treatment, which implies

that some type of treatment will occur. In most situations the licensed applicator has a contract with a school district or other businesses and has a routine schedule. By changing the word Service and adding additional wording, gives the applicator the ability to apply a pesticide if necessary; on the other hand, if all they are doing is putting out glue boards or checking glue boards nothing else will occur. This simple sign has imposed more headaches on IPM coordinators during their Establishment Inspections, after Green, Yellow, and Red Products.

Response: The Board believes that the language in the current sign is clear and does not need to be changed.

The Texas Cooperative Extension made comments for the proposed rule changes.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.11. Schools.

(a) Pesticide applications must not be made within a school building if any such application will expose students to unacceptable levels of pesticides.

(1) Insect and rodent baits in tamper-resistant containers or bait stations that are on the Green List, or non-containerized baits or gels that are on the Green List, as well as botanical insecticides which are on the Green List may be applied at any time if students are not present in the room at the time the treatment is occurring. These products may be applied to an open area or multi-purpose room if the area within ten (10) feet of the location is secured and no students are present within the secured area during the time of application.

(2) All other Green List products and Yellow List products may be applied to a room only if students are not expected to be present in the room for the next twelve 12 hours, or the specified re-entry on the pesticide label, whichever is longer.

(3) Red List products may be applied to a building only if students are not expected to be present in the building for the next twelve 12 hours, or the specified re-entry on the pesticide label, whichever is longer.

(b) Pesticide applications shall not be made to outdoor school grounds if such an application will expose students to physical drift of pesticide spray particles or unacceptable levels of pesticides.

(1) Green List products may be applied if students are not expected to be present within ten (10) feet of the application site at the time of application.

(2) Yellow List products may be applied if students are not expected to be present within ten feet of the application site for the next twelve 12 hours, and if the treated area is clearly marked to discourage entry, or secured by means of a fence or similar barrier.

(3) Red List products may be applied if students are not expected to be present within fifty (50) feet of the application site for the next twelve (12) hours, and if the treated area is clearly marked to discourage entry, or secured by means of a fence or similar barrier. Red List products may be applied only if there are no wind conditions that would disperse the chemical beyond the marked or secured zone.

(c) Emergency treatments will be permitted in the localized area of infestation when there is an imminent threat to health or property or an infestation is imminent. Records of the reasons for emergency treatments must be kept in the pest control use records of the business or certified noncommercial applicator performing the treatment.

(d) Each school district must develop a written pest management policy for all structural pest control activities conducted on school property based on the most current Texas Structural Pest Control Integrated Pest Management (IPM) document. The pest management policy must be adopted by the school board and kept on file by the district superintendent and IPM Coordinator(s). The policy must be based on generally accepted tenets of integrated pest management, as defined by the Environmental Protection Agency. Such tenets include, but are not limited to:

(1) strategies that rely on the best combination of pest management tactics that are compatible with human health and environmental protection;

(2) proper identification of pest problems;

(3) monitoring programs to determine when pests are present or when pest problems are severe enough to justify corrective action;

(4) use of non-chemical management strategies whenever practical; and

(5) preferential use of least-toxic chemical controls when pesticides are needed.

(e) Each school district must designate an IPM Coordinator(s). The IPM Coordinator(s) must implement the school district's IPM policy. The district is responsible for the IPM Coordinator(s) compliance with Texas Structural Pest Control Board regulations and school district policy. The person(s) so designated must attend a Texas Structural Pest Control Board approved IPM Coordinator(s) training course within twelve (12) months of designation as IPM Coordinator. The IPM Coordinator(s) must oversee and be responsible for:

(1) assisting in the coordination of pest management personnel, ensuring that all school employees who perform pest control have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(2) maintaining a prioritized list of needed structural and landscape improvements;

(3) for school districts that conduct some or all pest management work through independent contractors, working with district administrators to ensure that pest control proposal specifications are compatible with IPM principles, and that pest control contractors work under the guidelines of the district's IPM policy;

(4) ensuring that all pesticides used on school district property are in compliance with the school district's policies and keep current pesticide labels, and Material Safety Data Sheets (MSDS);

(5) authorizing and reviewing least hazardous, effective emergency treatments with the approval of the certified applicator as provided for under §§595.6(d), 595.7(d), 595.8(d) and this section of the Texas Structural Pest Control Board regulation;

(6) handling requests and inquiries relating to pest problems, and maintain records of any pesticide related complaints;

(7) ensure that files are maintained regarding pesticide application records, and incidental use reports are per §595.17 Incidental Use For Schools;

(8) informing school district administrators and other personnel about IPM requirements (e.g., training requirements, pre-notification and posting requirements, sanitation, and pesticide storage); and

(9) maintaining a copy of the school's IPM policy.

(f) Each school district must employ or contract with a certified applicator, who may, if an employee, also be the IPM Coordinator(s). The certified applicator must:

(1) oversee day to day pest management needs of the district;

(2) provide written approval/justification of use of products on the Yellow List;

(3) handle and forward records of any complaints relating to pest problems, IPM activities, or pesticides to the IPM Coordinator(s);

(4) ensure that proper pesticide application records are maintained;

(5) participate in IPM training courses approved for school IPM personnel by the Texas Structural Pest Control Board;

(6) consult with the IPM Coordinator(s) concerning use of products not on the Green or Yellow List;

(7) authorize emergency treatments as provided for in subsection (e)(5) of this section.

(g) Licensed technicians must obtain written approval from the certified applicator to apply Yellow or Red List products.

(h) Pesticides approved for use on school property must be mixed outside student occupied areas of the buildings and are classified as follows:

(1) Green List Products. All products must be one of the following: inorganic pesticides (i.e., boric acid, disodium octoborate tetrahydrate, silica gels, diatomaceous earth); insect growth regulators; insect and rodent baits in tamper-resistant containers or for crack and crevice placement only; microbe-based insecticides; botanical insecticides (not including synthetic pyrethroids) containing not more than 5.0% synergists; biological (living) control agents, pesticidal soap and natural and synthetic horticultural oils. Green List products may be used at the discretion of the licensee.

(2) Yellow List Products. All EPA III and IV pesticides (i.e., products carrying a CAUTION signal word or no signal word as exempted by the Federal Insecticide, Fungicide, and Rodenticide Act Sec. 25 (b) not included as a Green List product, with the exception of restricted-use or state-limited-use pesticides as defined under the Federal Insecticide, Fungicide, and Rodenticide Act and/or the Texas Agriculture Code. Use of Yellow List products require written approval from the certified applicator. A copy of the approval must be sent to the IPM Coordinator(s). Yellow List product approvals shall have a duration of no longer than six (6) months or six (6) applications per site, whichever occurs first.

(3) Red List Products. All Category I and II pesticides (i.e., products carrying a WARNING or DANGER signal word), not included as a Green List product or restricted use pesticides, or state-limited-use pesticides as defined under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and/or the Texas Agriculture Code. Use of Red List products require prior written approval from the certified applicator and the IPM Coordinator(s). A copy of the approval must be kept in a separate file in the pest control use records for the school and clearly marked as Red List Approvals. Red List product approvals shall have a duration no longer than three (3) months or three (3) applications per site, whichever is first.

(i) Written approvals for use of Yellow and Red List products must be made on a form developed by the Texas Structural Pest Control Board. The approvals must include a description of the problem and justification for use of the Yellow and Red List products. Approvals must be kept by the IPM Coordinator(s) of the district for a minimum of two (2) years. If the applicator fails to submit a request for approval for the application of a Red List product to the IPM Coordinator(s), then the applicator is subject to administrative penalty.

(j) All pest control services must be consistent with the school district's written pest management policy.

(k) Any person found not in compliance with the Act or this section is subject to administrative penalties. Such persons may include the school district or certified commercial applicator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501580
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.12

The Texas Structural Pest Control Board adopts an amendment to §595.12, concerning Misapplications without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11891).

Justification for the rule is grammatical in nature.

The rule will function by making the regulation easier to read by correcting the grammar.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §595.13

The Texas Structural Pest Control Board adopts an amendment to §595.13 concerning Advertising without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11891).

Justification for the rule is grammatical in nature.

The rule will function by making the regulation easier to read by correcting the grammar.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8270

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22 TAC §595.14

The Texas Structural Pest Control Board adopts an amendment to §595.14 concerning Reduced Impact Pest Control Service without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11892).

Justification for the rule is grammatical in nature.

The rule will function by making the regulation easier to read by correcting the grammar.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §595.15

The Texas Structural Pest Control Board adopts an amendment to §595.15, concerning Incidental Use Situation Fact Sheet with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11893). The addition of "certified" to non-commercial applicator is made to provide clarity. The other change is grammatical in nature.

Justification for the rule is grammatical in nature and to reflect the correct legal name for the Board with the codification into the Occ. Code.

The rule will function by making the regulation easier to read by correcting the grammar and reflecting the statutory changes.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.15. Incidental Use Situation Fact Sheet.

(a) The Texas Structural Pest Control Board Incidental Use Fact Sheet must contain the following text: "This fact sheet must be distributed to all city, county, and state employees who apply general use pesticides and are not licensed by the Texas Department of Agriculture and do not have a Texas Structural Pest Control Board noncommercial applicator's or technician license. The fact sheet and instruction must be provided upon initial employment and thereafter must be available as needed. These general use pesticides include insecticides, herbicides, fungicides and rodenticides and involve applications made both inside and outside of structures. Incidental Use is not intended for long terms or extensive pest control measures. Where long term pest control is required, a trained, licensed person is to make the applications. Incidental Use is defined as "A pesticide application on an occasional, isolated, site-specific basis that is incidental to the primary duties of an employee and involves the use of general use pesticides after instruction as provided by rules adopted by the Texas Structural Pest Control Board". Examples of Incidental Use Situations are treating fire ants in a transformer box, or treating of ants by a janitor or clerical employee in a break area. Incidental is defined as site-specific and incidental to the employee's primary duties. If it is a part of the employee's primary duty to make applications of pesticides, that employee is required, by law, to obtain either a Texas Structural Pest Control Board license or Texas Department of Agriculture license, depending on the location and type of application. In all cases of incidental use, the employee should use the least hazardous, effective method of controlling pests. If chemicals are to be utilized, they must be applied in strict accordance with manufacturer labels of "General Use" products being used. Applications made inconsistent with the label requirements of the general use product may result in penalties being assessed against the individual and/or the certified noncommercial applicator or technician responsible. "Incidental Use Situation" applications of pesticides are regulated by the Texas Structural Pest Control Board. If you have any questions or comments, contact the Board at (512) 305-8250; written inquiries may be addressed to the Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767-1927." Copies are available from the Texas Structural Pest Control Board.

(b) The incidental use fact sheet must be provided during pesticide instruction to each employee of the state, a political subdivision of the state, or a non-commercial entity other than a school district whose primary duty is not pest control, and whose work may include tasks subject to the incidental use exception.

(c) Each governmental unit is responsible for distributing the fact sheet to the designated employees.

(d) Primary duty is defined as a job duty that is part of a written job description or is a regularly assigned task of the employee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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Proposal publication date: December 24, 2004
For further information, please call: (512) 305-8270

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22 TAC §595.17

The Texas Structural Pest Control Board adopts an amendment to §595.17, concerning Incidental Use For Schools with changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11893). The change is grammatical in nature.

Justification for the rule is grammatical in nature. The other changes were made to provide consistency with 22 TAC §595.11. The rules adopted by the Board apply regardless of the type of insect and the example given in the rule was providing confusion. The Board has also not adopted standards for training individuals in incidental use applications. Such standards would be similar to technician/apprentice standards and would be a form of double regulation.

The rule will function by making the regulation easier to read by correcting the grammar and providing consistency with other Board Rules.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§595.17. Incidental Use For Schools.

(a) The Texas Structural Pest Control Board Incidental Use Situation For Schools Fact Sheet must contain the following text: "This fact sheet must be distributed to all employees of school districts who apply general use Green List products (or Yellow List products specific to bee and wasp applications) and are not licensed by the Texas Department of Agriculture and do not have a Texas Structural Pest Control Board noncommercial applicator's or technician license. The fact sheet, instruction and training must be provided upon initial employment by the school district's IPM Coordinator, and thereafter must be available as needed. These general use Green List pesticides include insecticides only and involve applications made both inside and outside of structures. Incidental Use is not intended for long term or extensive pest control measures, rather emergency situations where safety of students or workers is at risk and there is insufficient time to contact a licensed applicator. Where long term pest control is required, a trained, licensed person is to make the applications. Examples of Incidental Use situations are treating fire ants in a transformer box or treatments for bees or wasps as a non-routine application to protect children or personnel. Incidental Use is defined as site-specific and incidental to the employee's primary duties. If it is part of the employee's primary duty to make applications of pesticides, that employee is required, by law, to obtain either a Texas Structural Pest Control Board license or Texas Department of Agriculture license, depending on the location and type of application. In all cases of Incidental Use, the employee should use the least hazardous, effective method of controlling pests. All applications to schools or school grounds must be in compliance with school district IPM policies. If chemicals are utilized, they must be applied in strict accordance with manufacturer labels of "General Use" products on the Green or Yellow List products being used. Applications made inconsistent with the Texas Structural Pest Control Board Law and Regulations, or applications made inconsistent with the label requirements of the general use product may result in penalties being assessed against the individual and/or the certified applicator or technician responsible. "Incidental Use Situation" applications of pesticides are regulated by the Texas Structural Pest Control Board. If you have any questions or comments, contact the Board at (512) 305-8250 inquiries may be addressed to the Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78764-1927. Copies are available from the Texas Structural Pest Control Board.

(b) The Incidental Use For Schools Fact Sheet must be provided during pesticide instruction and training by the IPM Coordinator to each employee of the school district whose primary duty is not pest control, and whose work may include tasks subject to the exception. The IPM Coordinator must keep records of all the training conducted annually.

(c) Primary duty is defined as a job duty that is part of a written job description or is a regularly assigned task of the employee.

(d) Pest control use records must be kept by IPM Coordinator(s) for all Incidental Use applications including reason for application and justification for emergency for two (2) years.

(e) Incidental Use in school districts is limited to insecticides and rodenticides that are Green and Yellow list products.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dale Burnett
Executive Director
Texas Structural Pest Control Board
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For further information, please call: (512) 305-8270

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22 TAC §595.22

The Texas Structural Pest Control Board adopts an amendment §595.22, concerning Investigation of Complaints without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11894).

Justification for the rule is that reports are not issued on every complaint. The wording is added to reflect that practice.

The rule will function by not issuing a report on every complaint.

No comments were received.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-8270

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.10, 115.229, and 115.429. Section 115.10 is adopted *with change* to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11910). Sections 115.229 and 115.429 are adopted *without changes* and will not be republished.

These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq*. require EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas/Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate, in accordance with the 1990 FCAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas/Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the EPA reclassified the Dallas/Fort Worth area from "moderate" to "serious," resulting in a requirement to submit a new SIP demonstrating attainment by the new deadline of November 15, 1999.

The November 15, 1999 deadline passed, and EPA has not made a determination regarding the Dallas/Fort Worth area attainment status. In the attainment demonstration SIP adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Houston/Galveston/Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the Dallas/Fort Worth area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was overturned by federal courts, which ruled that EPA does not have authority to extend an area's attainment date based on transport. Although the Dallas/Fort Worth area was not the specific subject of any of these suits, the Dallas/Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approved by EPA. Thus, the Dallas/Fort Worth area does not currently have an approved attainment demonstration SIP for the one-hour ozone NAAQS.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS), and on April 30, 2004, promulgated the first phase implementation rule for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas/Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the Dallas/Fort Worth eight-hour ozone nonattainment area (DFW area). The DFW area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) effective June 15, 2004, for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I guidance provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the designation (by June 15, 2005); 2) submit an eight-hour ozone plan no later than one year after the effective date of the designation (by June 15, 2005) that provides a 5% increment of reductions from the area's 2002 emissions baseline in addition to federal measures and state measures already approved by EPA, and achieves these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three require successful photochemical grid modeling performance. The commission, in coordination with EPA, determined that option two is the most expeditious approach to beginning to achieve the reductions ultimately needed to: 1) meet the June 15, 2005 transportation conformity deadline; and 2) attain the eight-hour ozone NAAQS by June 15, 2010. In order for the DFW area to comply with the requirement to submit a 5% increment of progress plan that provides a 5% emission reduction from the 2002 emissions baseline, additional emission reduction strategies are necessary.

The adopted rules represent two of the control strategies that have been selected to provide the 5% increment of progress. The SIP revision also establishes a 2007 motor vehicle emissions budget (MVEB) for the DFW area, which is necessary to prevent a transportation conformity lapse after June 15, 2005.

Amendments to Chapter 115, Subchapter A, Definitions, revise the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dallas/Fort Worth area." This definition change is for the purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes.

Amendments to Chapter 115, Subchapter C, Division 2, lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons of gasoline in a calendar month to 10,000 gallons of gasoline in a calendar month in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties.

Amendments to Chapter 115, Subchapter E, Division 2, extend the control requirements to Ellis, Johnson, Kaufman, Parker, and Rockwall Counties.

The emission reduction requirements in this rulemaking will result in reductions in ozone formation in the DFW area and help bring the DFW area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas/Fort Worth SIP that the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA. EPA has not yet issued Phase II of its eight-hour implementation rule (Phase II guidance) for states to use in developing eight-hour ozone attainment demonstrations. Phase II guidance, expected to be promulgated by EPA later this year, will provide additional information relating to eight-hour ozone attainment demonstrations. The commission is continuing to prepare for the required eight-hour ozone attainment demonstration SIP.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

§115.10, Definitions

The amendment to §115.10 revises, for the purposes of Subchapter C, Division 2, the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dallas/Fort Worth area" definition. Additionally, the definition change for "Dallas/Fort Worth area," that includes Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, applies to Subchapter E, Division 2. The existing definitions continue to apply in the other sections of the chapter. A reference to the Texas Health and Safety Code has been added to the first sentence of §115.10, as a change to the proposed language, to be consistent with other agency rules.

Subchapter C, Volatile Organic Compound Transfer Operations

Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

§115.229, Counties and Compliance Schedules

The amendment to §115.229 adds new subsection (d) to specify that facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that have dispensed at least 10,000 but less than 125,000 gallons of gasoline per month must comply with the requirements as soon as practicable, but no later than June 15, 2007. This date is the deadline specified for control measures to be in place for the 5% increment of progress.

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.429, Counties and Compliance Schedules

The amendment to §115.429 designates the existing text in §115.429 as §115.429(a) and adds a new subsection (b), to specify that surface coating facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must comply with the requirements as soon as practicable, but no later than June 15, 2007. This date is the deadline specified for control measures to be in place for the 5% increment of progress.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§115.10, 115.229, and 115.429 lower the exemption level for motor vehicle fuel dispensing facilities subject to Stage I vapor recovery requirements in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, extend surface coating requirements in Chapter 115 to the same counties, and revise the SIP to include these requirements. While this rulemaking is intended to protect the environment by reducing VOC emissions that help form ozone, the commission does not find that the additional motor vehicle fuel dispensing facilities and surface coating operations covered by this rulemaking comprise a sector of the economy, or that the rules will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area.

The adopted amendments to Chapter 115 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the adopted amendments to Chapter 115 were developed as part of the control strategy to meet the eight-hour ozone NAAQS set by the EPA under 42 USC, §7409, and therefore meet a federal requirement. 42 USC, §7410, requires states to adopt and submit a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq*. does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq*., recognized that the states

are in the best position to determine what programs and controls are necessary or appropriate to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegation federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC, §§7401 *et seq*. does not require specific programs, methods, or reductions in order to meet the NAAQS; thus states must develop programs for each nonattainment area to ensure that the area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require a full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules may have broad impacts, those impacts are no greater than necessary or appropriate to meet the requirements of the FCAA, 42 USC, §§7401 *et seq*. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable and 42 USC, §7511a(c), requires states to submit attainment demonstration SIPs for ozone nonattainment areas, such as the DFW area. The adopted rules, which will reduce ozone in the DFW area, will be submitted to the EPA as one of several measures in the federally required SIP. By reducing emissions of VOCs, these controls will result in reductions in ozone formation in the DFW area and help bring the DFW area into compliance with the air quality standards established under federal law as NAAQS for ozone. Therefore, the adopted rulemaking is a necessary component of, and consistent with, the eight-hour ozone attainment demonstration Dallas/Fort Worth SIP required by 42 USC, §7410.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485. 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

As discussed earlier in this preamble, this rulemaking action implements requirements of 42 USC, §§7401 *et seq*. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §382.012 and §382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purposes of this rulemaking are to achieve reductions of VOC emissions to reduce ozone formation in the DFW area and help bring the DFW area into compliance with the air quality standards established under federal law as NAAQS for ozone. If adopted, motor vehicle fuel dispensing facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that dispense at least 10,000 but less than 125,000 gallons of gasoline per month will be subject to Stage I vapor recovery requirements and surface coating control requirements in Chapter 115 will be extended to the same counties. The Stage I gasoline vapor recovery portion of these requirements could conceivably place a burden on private, real property to the extent that they require the installation of permanent equipment at fuel dispensing facilities.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. The emission limitations and control requirements within this rulemaking action were developed in order to meet the eight-hour ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them.

Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA.

In addition, Texas Government Code, §2007.003(b)(13), states that Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the DFW area exceeding the federal eight-hour ozone NAAQS, that adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by reducing ozone levels in the DFW area. Consequently, these adopted rules meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the adopted rules do not constitute a takings under Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission conducted public hearings on the proposed rules on January 3, 2005, in Arlington, Texas; January 4, 2005, in Austin, Texas; and January 5, 2005, in Houston, Texas. No comments were received at the public hearings regarding this rulemaking in particular. The public comment period closed on January 6, 2005. The commission received a written comment from Mayor Robert N. Cluck, M.D., City of Arlington, Texas (Mayor Cluck), who spoke in support of the collaboration between the commission and EPA.

RESPONSE TO COMMENTS

Mayor Cluck stated support for the commission's work with EPA to bring cleaner air to North Texans.

The commission appreciates the support of Mayor Cluck and will continue to work with EPA to improve air quality in the North Texas region.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The adopted amendment implements Texas Water Code, §5.103 and §5.105; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Background--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) Beaumont/Port Arthur area--Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Closed-vent system--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(7) Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(8) Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(9) Covered attainment counties--For purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties. For all other divisions, Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(10) Dallas/Fort Worth area--For purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, and Tarrant Counties.

(11) El Paso area--El Paso County.

(12) Emergency flare--A flare that only receives emissions during an upset event.

(13) External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(14) Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(15) Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(16) Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(17) Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(18) Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOCs): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOCs: ethylene and propylene.

(19) Houston/Galveston or Houston/Galveston/Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(20) Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(21) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(22) Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(23) Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute

(0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(24) Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(25) Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(26) Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(27) Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(28) Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(29) Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(30) Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

(31) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(32) Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(33) Pressure relief valve--A safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A pressure relief valve is automatically actuated by the static pressure upstream of the valve, but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(34) Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(35) Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(36) Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(37) Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(38) Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(39) Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(40) Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(41) Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(42) Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(43) Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(44) True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(45) Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(46) Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(47) Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(48) Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.229

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements Texas Water Code, §5.103 and §5.105; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.208.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. SOLVENT-USING PROCESSES
DIVISION 2. SURFACE COATING PROCESSES

30 TAC §115.429

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, 291.41, 291.81, 291.87, 291.121, 291.122, 291.124, 291.125, and 291.127 *without changes* to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10883). The adopted amendments will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts the amendments to implement House Bill (HB) 1152, HB 2388, and HB 3034, 78th Legislature, 2003. The adopted amendments also implement Senate Bill (SB) 2,

Article 10, 77th Legislature, 2001, with regard to aspects concerning regulation of utility rates and services.

HB 1152, an act relating to the authority of certain nonprofit water supply corporations and sewer service corporations to establish and enforce customer water conservation measures, amended Texas Water Code (TWC), §67.011 by adding subsection (a)(5) and subsection (b). Under new TWC, §67.011(a)(5), in a county with a population of less than 3.3 million, a corporation may establish and enforce reasonable customer water conservation practices and prohibit excessive or wasteful uses of potable water. Under new TWC, §67.011(b), a corporation may enforce customer water conservation practices under TWC, §67.011(a)(5) by assessing reasonable penalties as provided in the corporation's tariff. A penalty may be appealed in the same manner as provided for appeal of new customer service costs under TWC, §13.043(g). In an appeal, the commission shall approve a corporation's penalty if the commission determines that the penalty is clearly stated in the tariff, that the penalty is reasonable, and that the corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all the corporation's customers.

HB 2388, an act relating to the late payment of certain submetered or allocated water bills and the use of certain submetering equipment, amended TWC, §13.503(a) and (b) and added new §13.503(e). Under amended subsection (a), language was added to require the commission to encourage submetering of individual rental or dwelling units by building owners to enhance the conservation of water resources. Under amended subsection (b), language was added to require commission rules that will allow an owner or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed 5% of the bill paid late. Under new subsection (e), the commission may authorize a building owner to use submetering equipment that relies on integrated radio-based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

HB 2388 also amended TWC, §13.5031 to allow a condominium owner or manager to charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed 5% of the bill paid late.

HB 3034, an act relating to the rates of certain retail public utilities, amended Chapter 966, §10.08(a), 77th Legislature, 2001, to state that the changes in law being made to TWC, Chapter 13 apply to a proceeding in which the commission has not issued a final order before the effective date of this article, provided, however, that this article does not apply to a public utility that provided utility service in only 24 counties on January 1, 2003. The bill also states that the provisions of TWC, Chapter 13 that were in effect before September 1, 2001 apply to those public utilities.

SB 2, Article 10 contains requirements applicable to water utility systems other than a utility that provided service in only 24 counties on January 1, 2003, including requirements concerning utility business locations, disclosure of affiliated interests, multiple system consolidation, regional rates, alternative ratemaking methodologies, billing comparisons, suspension of proposed rates, refunds, and contracts between certain affiliates.

SECTION BY SECTION DISCUSSION

The commission implements HB 3034 with an amendment to §291.8. Under subsection (b) , the commission includes new statutory language concerning the effective date of proposed rate changes for a utility that provided service in only 24 counties on January 1, 2003. Under adopted §291.8(b), in cases involving proposed rate changes, the effective date of the proposed change must be at least 60 days or 30 days for a utility that provided service in only 24 counties on January 1, 2003 after: 1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed; 2) the date that the application and notice are determined to be administratively complete for previously rejected applications and notices; or 3) the date that the notice is delivered to each ratepayer, whichever is later. The new language is the phrase "or 30 days for a utility that provided service in only 24 counties on January 1, 2003."

The commission implements HB 3034 with an amendment to §291.15, concerning notices of wholesale water supply contracts. Under subsection (b)(9), the commission adds the following language: "a disclosure of any affiliated interest between the parties to the contract, except that this requirement does not apply to a utility that provided service in only 24 counties on January 1, 2003." The commission also amends §291.15 to make it more readable by reformatting subsection (b) into paragraphs and relocating to new subsection (c) the requirement concerning submittal of the certified copy of the contract. Finally, the commission corrects the name of the division under new subsection (c) by deleting the word "Utilities" and replacing it with the word "Supply."

The commission implements certain aspects of SB 2, Article 10 with an amendment to §291.21, regarding tariffs and rate designs. Under new subsection (m), the commission allows a utility, except as provided in new subsection (o), to consolidate its tariff and rate design for more than one system if: 1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and 2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation. Under new subsection (n), the commission, except as otherwise provided in new subsection (o) , where practicable, shall consolidate the rates by region for applications submitted with a consolidated tariff and rate design for more than one system.

The commission implements HB 3034 with an amendment to §291.21. Under new subsection (o), subsections (m) and (n) do not apply to a utility that provided service in only 24 counties on January 1, 2003.

The commission also implements HB 3034 with an amendment to §291.22, concerning notices of intent to change rates. Under subsections (a), (c), (d), and (e), the commission includes the following sentence: "Utilities that provided service in only 24 counties on January 1, 2003 are required to provide the statement of intent to change rates at least 30 days prior to the proposed effective date." Also under adopted subsection (a), the following exemption language is added with regard to billing comparison information in the notice of intent to change rates: "Paragraphs (3) and (4) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003."

The commission implements certain aspects of SB 2, Article 10 with an amendment to §291.22. Under subsection (a)(3), a notice of intent to change rates must include a billing comparison

showing the existing rate and the new computed water rate using: 1) 10,000 gallons of water; and 2) 30,000 gallons of water. Under adopted subsection (a)(4), the notice of intent must include a billing comparison showing the existing sewer rate and the new sewer rate for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services.

The commission implements HB 3034 and certain aspects of SB 2, Article 10 with an amendment to §291.24, concerning restrictions on contracting to purchase wholesale water service from an affiliated supplier. Under new subsection (b), except for a utility that provided service in only 24 counties on January 1, 2003, the owner of a utility that supplies retail water service may not contract to purchase wholesale water service from an affiliated supplier for any part of that owner's systems unless: 1) the wholesale service is provided for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; or 2) the executive director determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

The commission implements certain aspects of SB 2, Article 10 with an amendment to §291.26, concerning suspensions of proposed rate changes under certain conditions. Under new subsection (c), if the commission receives the required number of protests that would require a contested case hearing, the commission may, pending the hearing and a final decision from the commission, suspend the date the rate change would be effective. Also, the rate may not be suspended for more than 150 days. Finally, under subsection (c), the commission adds the HB 3034 exemption language by stating that this provision does not apply to a utility that provided service in only 24 counties on January 1, 2003.

The commission also implements HB 3034 and certain aspects of SB 2, Article 10 with an amendment to §291.28, regarding actions on notice of rate changes. Under §291.28(1), the commission replaces the phrase "within 60 days" with the phrase "before the 91st day" and adds the phrase "or the 61st day for a utility serving in 24 counties on January 1, 2003." With these revisions, the first sentence under §291.28(1) reads: "If, before the 91st day after the effective date of the rate change or the 61st day for a utility serving in 24 counties on January 1, 2003, the commission receives a complaint from any affected municipality, or from the lesser of 1,000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing."

The commission also implements certain aspects of SB 2, Article 10 with an amendment to §291.29, regarding interim rates and refunds. Under new subsection (c), the commission adds language allowing the commission during a rate proceeding, for good cause, to require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. Also, under new subsection (c), the commission adds the HB 3034 exemption language by stating that this provision does not apply to a utility that provided service in only 24 counties on January 1, 2003. In order to account for the addition of adopted new subsection (c), the previously existing subsection (c) is relettered as subsection (d). Also, previously existing subsection (d) is revised to enhance readability by restructuring the language. Therefore, previously existing subsections (d) - (h) are relettered as subsections (e) - (j). In addition, the commission reletters previously existing subsection (i) as subsection (k) and adds the previously mentioned HB 3034 exemption language.

The commission also implements certain aspects of SB 2, Article 10 with an amendment to §291.31, regarding expenses not allowed to be counted as cost of service. Under subsection (b)(2), the commission adopts new subparagraph (J) that disallows the costs of purchasing groundwater from any source if the source of the groundwater is located in a priority groundwater management area and a wholesale supply of surface water is available. In addition, the commission adds the HB 3034 exemption language under new subparagraph (K).

The commission implements HB 3034 and certain aspects of SB 2, Article 10 with an adopted amendment to §291.34, concerning alternative rate methods. Under subsection (a), the commission adds the phrase "more affordable" and adds the HB 3034 exemption language, which states: "The commission may not utilize an alternate method of establishing rates based upon whether the rate is more affordable for a utility that provided utility service in only 24 counties on January 1, 2003."

The commission implements HB 1152 with an adopted amendment to §291.41, which adds new subsection (j) to provide conditions for appealing a water conservation penalty. The adopted language states: "A customer of a water supply corporation may appeal to the commission a water conservation penalty. An appeal under Texas Water Code, §67.011(b) must be initiated by the customer within 90 days after written notice of the water conservation penalty amount is received from the water supply corporation per its tariff. The appeal must be accompanied by a $100 filing fee as required by Texas Water Code, §5.235. The commission shall approve the water supply corporation's water conservation penalty if: 1) the penalty is clearly stated in the tariff; 2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and 3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers."

The commission also implements certain aspects of SB 2, Article 10 with an adopted amendment to §291.81, concerning customer relations. The commission adopts revisions to §291.81(d), regarding requirements for local offices. The commission reformats subsection (d) by dividing the subsection into paragraphs. The primary change under paragraph (2) involves location of the utility's business location. To conform with SB 2, the commission adopts the requirement that, unless otherwise authorized by the executive director in response to a written request, each utility shall make available and notify customers of a business location where applications for service can be submitted and payments can be made to prevent disconnection of service or to restore service after disconnection for nonpayment, nonuse, or other reasons specified in 30 TAC §291.88. The business must be located in each county where utility service is provided or not more than 20 miles from any residential customer if there is no location to receive payments in that county. Minor editorial changes are also adopted under paragraph (2), including insertion of the word "otherwise" just before "authorized" and replacement of the word "pursuant" with "in response." Also to conform with SB 2, the commission adopts new paragraph (3) to address the waiver provisions, by adding the rule language: "Upon request by the

utility, the requirement for a local office may be waived by the executive director if the utility can demonstrate that these requirements would cause a rate increase or otherwise harm or inconvenience customers."

In §291.81(d), the commission adopts new paragraph (4) to address the HB 3034 exemption provision by adding the rule language: "Paragraphs (2) and (3) of this subsection do not apply to a utility that provided service in only 24 counties on January 1, 2003. Unless otherwise authorized by the executive director in response to a written request, such utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where applications for service can be submitted and payments can be made to prevent disconnection of service or restore service after disconnection for nonpayment, nonuse, or other reasons specified in §291.88 of this title."

The commission adopts an amendment to §291.87 by adding new subsection (b)(2), which provides a requirement relating to the bill due date. The adopted rule language states: "If a utility has been granted an exception to the requirements for a local office in accordance with §291.81(d)(3) of this title (relating to Customer Relations), the due date of the bill for utility service must not be less than 30 days after issuance."

The commission implements HB 2388 with amendments to §§291.121, 291.122, 291.124, 291.125, and 291.127. Under adopted §291.121, a new definition is added and an existing definition is revised. The adopted new definition of "Point-of-use submeter" is defined as "A device located in a plumbing system to measure the amount of water used at a specific point of use, fixture, or appliance, including a sink, toilet, bathtub, or clothes washer." The definition of "Submetered utility service" is revised by adding "water utility service measured by point-of-use submeters when all of the water used in a dwelling unit is measured and totaled; or wastewater utility service based on total water use as measured by point-of-use submeters" at the end of the definition. The commission also renumbers previously existing definitions in paragraphs (11) - (13) to account for the addition of a new definition in paragraph (11).

In §291.122, Owner Registration and Records, subsection (e)(7)(B) is revised by adding the phrase "or point-of-use submeters."

In §291.124, Charges and Calculations, subsection (f) is revised by deleting language referring to an obsolete date and by adding the word "immediately" prior to the phrase "provide notice."

In §291.125, Billing, subsection (c), concerning submeter reading schedule, is revised by adding the phrase "or point-of-use submeters must" and by deleting the word "shall." Under subsection (g), concerning information on submetered service, paragraph (1) is deleted. Also, previously existing paragraph (2) is renumbered as paragraph (1) and revised to read: "the total number of gallons, liters, or cubic feet submetered or measured by point-of-use submeters." This adopted revision involves inserting the word "total" before the word "number" and replacing the word "metered" with the phrase "submetered or measured by point-of-use submeters." Previously existing paragraphs (3) and (4) are renumbered as paragraphs (2) and (3), respectively, to account for the deletion of paragraph (1). Under subsection (i), concerning estimated bill, the phrase "or point-of-use submeter" is added. Under subsection (k), concerning overbilling and underbilling, the phrase "or point-of-use submeter" is added. New subsection (m) is adopted to read: "Late fee. A one-time penalty not to exceed 5% may be applied to delinquent accounts. If such a penalty is applied, the bill must indicate the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease that states the percentage amount of such late penalty."

Under §291.127, Submeters and Plumbing Fixtures, numerous revisions are adopted concerning point-of-use submeters. First, the title of this section is amended to insert the phrase "or Point-of-Use Submeters." References to point-of-use submeters are added to the rule language under subsection (a) in paragraphs (1) - (5), (6)(C) and (E), (7)(A) and (B), (8)(B), (9), and (10). In addition, under subsection (a)(4), the following sentence is added: "Point-of-use submeters must be calibrated as closely as possible to the condition of zero error and within the accuracy standards established by the American Society of Mechanical Engineers (ASME) for point-of-use and branch-water submetering systems." Also, under subsection (a)(5), the phrase "or ASME standards for point-of-use submeters" is added, and the word "reading" is deleted. Under subsection (a)(8)(A), the phrase "or ASME standards for point-of-use submeters" is added and a reference is corrected. Under subsection (a)(7)(C), the phrase "or the point-of-use submeter meets ASME accuracy standards" is added. Under subsection (a)(9), the phrase "or a point-of-use submeter does not meet ASME accuracy standards" is added. Under subsection (a)(10), the first full sentence is revised to refer to submeters and the American Water Works Association (AWWA), and the phrase "applicable to utilities under §291.89(e) of this title (relating to Meters)" is deleted. Finally, subsection (a)(10) is amended to add the sentence: "For point-of-use meters, an owner shall comply with ASME's meter testing requirements."

Administrative and grammatical changes are adopted throughout the sections to be consistent with Texas Register requirements and other commission rules, to conform with the Texas Legislative Council Drafting Manual, and to improve readability.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from exposure and that may adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules concern regulation of utility rates and services, including relatively minor revisions regarding: 1) a utility that provided service in only 24 counties on January 1, 2003; 2) conditions for appealing a water conservation penalty; 3) point-of-use submeters; and 4) late fees. The adopted amendments incorporate new state legislative requirements and provide for regulatory consistency. Because of their relatively minor significance and impact, the adopted amendments will not adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule

is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for utility rates and services; 2) does not exceed the requirements of state law, including TWC, Chapter 13; TWC, §67.011; or HB 3034, 78th Legislature, 2003; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program on utility rates and services, because there are no such delegation agreements or contracts concerning utility rates and services to which these rules apply; 4) is not adopted solely under the general powers of the agency, but also under TWC, Chapter 13, which was adopted to regulate the rates and services of retail public utilities; TWC, §67.011, which was adopted to address powers of corporations in certain counties; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates of and services of utilities. The commission invited, but received no public comment on the final regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments to Chapter 291 and performed an assessment of whether they constitute a takings under Texas Government Code, Chapter 2007. The primary purpose of the adopted amendments is to incorporate new state legislative requirements and provide for regulatory consistency in the regulation of utility rates and services by proposing relatively minor revisions regarding: 1) a utility that provided service in only 24 counties on January 1, 2003; 2) conditions for appealing a water conservation penalty; 3) point-of-use submeters; and 4) late fees. The adopted amendments would also provide non-substantive revisions, including typographical and formatting corrections to conform with Texas Register and agency requirements.

Promulgation and enforcement of the adopted amendments would constitute neither a statutory nor a constitutional taking of private real property. There are no burdens imposed on private real property under this rulemaking because the adopted amendments neither relate to, nor have any impact on the use or enjoyment of private real property, and there would be no reduction in value of property as a result of this rulemaking. The rulemaking relates primarily to the relationships between water utility operators and their customers, establishment of rates, procedures for providing services, and billing for the services. The adopted rules would provide protection to both the utility operators and their customers. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that it is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the rulemaking is not subject to the CMP. The commission invited, but received, no public comment on the CMP.

PUBLIC COMMENT

No public hearing was held on this rulemaking. The comment period ended December 27, 2004. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §291.8, §291.15

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also adopted under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The adopted amendments implement TWC, §13.144 and §13.187.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501548
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: November 26, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER B. RATES, RATE MAKING, AND RATES/TARIFF CHANGES

30 TAC §§291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also adopted under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The adopted amendments implement TWC, §§13.145, 13.183, 13.187, and 13.343.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RATE-MAKING APPEALS

30 TAC §291.41

STATUTORY AUTHORITY

This amendment is adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendment is also proposed under TWC, §67.011, which was adopted to address powers of corporations in certain counties.

The adopted amendment implements TWC, §67.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

30 TAC §291.81, §291.87

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities; and HB 3034, 78th Legislature, 2003, an act exempting a utility that provided service in only 24 counties on January 1, 2003, from certain requirements relating to the rates and services of utilities.

The adopted amendments implement TWC, §13.137.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. UTILITY SUBMETERING AND ALLOCATION

30 TAC §§291.121, 291.122, 291.124, 291.125, 297.127

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. The amendments are also proposed under TWC, Chapter 13, which was adopted to regulate rates and services of retail public utilities.

The adopted amendments implement TWC, §13.503 and §13.5031.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§293.1, 293.11, 293.41, 293.44, 293.51, 293.59, 293.80, 293.83, 293.113, 293.201, and §293.202. Sections 293.11, 293.41, 293.44, 293.51, 293.59, and 293.202 are adopted *with changes* to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10073). Sections 293.1, 293.80, 293.83, 293.113, and 293.201 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12 and 49 - 67. The commission oversees approximately 1,100 active water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to the engineering

standards and economic feasibility of district construction project design and completion.

A corresponding rulemaking published in this issue of the *Texas Register* includes changes to 30 TAC Chapter 301, Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements.

The adopted rulemaking establishes new or revises existing requirements relating to the administration of water districts and the commission's supervision over the districts' actions under TWC, Chapters 49, 54, and 57. House Bill (HB) 1541, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, relating to the administration, management, operation, and authority of water districts and authorities. HB 1541 also amends provisions in TWC, Chapter 54, concerning municipal utility districts and in Chapter 57, concerning levee improvement districts. HB 2887 amends TWC, §49.278, to exempt construction of temporary erosion control facilities from having to comply with competitive bidding requirements. Senate Bill (SB) 624, 78th Legislature, 2003, amends provisions in TWC, Chapter 49, to allow districts located in certain areas of the state to use tax proceeds for the construction and/or maintenance of recreational facilities, subject to voter authorization. SB 898 amends TWC, §49.181, to include additional requirements that exempt certain districts from having to obtain commission approval of its bond issues.

Specifically, the adopted rules provide certain districts with additional exemptions from having to obtain commission approval of bonds and notes; modify requirements that establish when a district is to obtain commission approval of refunding bonds; allow districts in specific counties to submit bond applications for recreational facilities that are supported by taxes; add provisions relating to the definition of recreational facilities and the funding of recreational facilities; specify bidding requirements; add provisions to allow a construction contract to include certain economic incentives or disincentives; specify provisions for the use of proceeds from the sale of property; modify provisions regarding the ability of a district and water supply corporation to require connection to the provider's wastewater collection system; and modify provisions regarding a municipal utility district's petitioning the commission for road utility district powers.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002.

§293.1, Objective and Scope of Rules; Meaning of Certain Words

Adopted §293.1(c) adds the definition for "recreational facilities" to be consistent with TWC, §49.462, and in accordance with SB 624, §7, which adds TWC, §49.466.

§293.11, Information Required to Accompany Applications for Creation of Districts

Adopted §293.11(a)(10) includes the requirement that a creation application contain a detailed summary of proposed recreational facility projects, the projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report. This will allow the executive director to implement SB 624, §4, which amends TWC, §49.463, and states that financing recreational facilities for the people in the district is an authorized purpose for which a district is created.

§293.41, Approval of Projects and Issuance of Bonds

Adopted §293.41(a) requires commission approval for refunding bonds if the debt being refunded was not originally approved by the commission, exempts refunding bonds from commission approval if issued by a district to refund bonds issued by a municipality that paid the cost of financing facilities, and exempts from commission approval bonds issued to and approved by the North American Development Bank, in accordance with HB 1541, §12, which amends TWC, §49.181(a). Adopted §293.41(d) exempts from commission approval bonds issued by a municipal utility district that is located in two counties, has long-term indebtedness rated BBB or better by a nationally recognized rating agency for municipal securities, and has at least 5,000 active water connections, in accordance with SB 898, §1, which amends TWC, §49.181(h). Adopted §293.41(e) allows districts in certain counties to submit tax-supported bond applications that include funding for certain recreational facilities and limits principal debt for recreational facilities to 1% or less of a district's taxable assessed valuation, in accordance with SB 624, §6, which adds TWC, §49.4645. Section 293.41(e)(1) requires a copy of a district's park plan to be provided with a bond application, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(2) and (3) details the types of recreational facilities that can be funded by a district and items that are not allowed to be funded, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(4) states that principal debt for recreational facilities can be no more than 1% of a district's taxable assessed valuation or the estimated cost in the park plan, whichever is less, in accordance with SB 624, §6, which adds TWC, §49.4645. Section 293.41(e)(5) provides that a district may submit a bond application for recreational facilities if the district has funded water, wastewater, and drainage facilities, or either of those facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads necessary to provide access to the recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.41(e)(6) requires plans and specifications for recreational facilities to be signed by an appropriate design professional, in accordance with SB 624, §7, which adds TWC, §49.466. SB 624, §7, adds TWC, §49.466, which requires the commission to develop rules for districts that emphasize the primary goal of financing water, wastewater, and drainage facilities, and the secondary goal of financing recreational facilities. Adopted §293.41(e) implements these goals.

§293.44, Special Considerations

Section 293.44(a)(1) is adopted to reference recreational facility service, in addition to the existing water, wastewater, and drainage services referenced, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.44(a)(12) and (24) reflects that costs for the portion of an amenity lake considered a recreational facility may be funded by the district, in accordance with SB 624, §4, which amends TWC, §49.463 and SB 624, §7, which adds TWC, §49.466. Adopted §293.44(b)(4) modifies the reference regarding a definition of recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466; deletes the reference to TWC, §54.772, in accordance with HB 1541, §27, which amends TWC, §54.201(b); reflects that districts in certain counties may issue tax-supported bonds for recreational facilities, in accordance with SB 624, §6, which adds TWC, §49.4645; and deletes the reference to requiring a 30% developer contribution for recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.44(b)(5) reflects that

bidding requirements are not applicable to contracts or services related to temporary erosion-control devices or to cleaning of silt and debris from streets and storm sewers, in accordance with HB 2887, §1, which amends TWC, §49.278(a). Adopted §293.44(b)(6) allows a district's construction contract to include economic incentives for early completion or disincentives for late completion of the work, in accordance with HB 1541, §19, which amends TWC, §49.271. The economic incentives for early completion or disincentives for late completion will be part of the proposal prepared by each bidder before the bid opening, and not negotiated after bid opening.

§293.51, Land and Easement Acquisition

Section 293.51(a) is adopted to require that easements or right-of-way areas for recreational facilities be donated without reimbursement, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted new §293.51(b)(8) adds district funding of recreational facility sites at a cost similar to sites for other district facilities, in accordance with SB 624, §7, which adds TWC, §49.466. Adopted §293.51(c) allows funding of land within a floodplain (including land for recreational purposes) to be the lessor of original cost plus carry or the appraised value, in accordance with SB 624, §7, which adds TWC, §49.466.

Section 293.51(d) is adopted to allow district funding of land costs for that portion of an amenity lake considered a recreational facility, in accordance with SB 624, §4, which amends TWC, §49.463; and SB 624, §7, which adds TWC, §49.466. Amended §293.51(g) allows funding of a regional site for recreational facilities, in accordance with SB 624, §7, which adds TWC, §49.466. New §293.51(i) reflects that costs for dual-use recreational and drainage/detention sites should be split 50% for each use, and that the costs for recreational sites should be reduced due to an existing drainage/detention easement, if any, in accordance with SB 624, §7, which adds TWC, §49.466. Allocating costs 50% to each use for dual-use items is common in the commission's existing Chapter 293 rules, such as clearing and grubbing right-of-way for district and developer use.

§293.59, Economic Feasibility of Project

Section 293.59(e) is adopted to include taxes attributable to recreational facilities in the calculation for projected combined no-growth tax rate of all overlapping entities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.59(f) is adopted to include taxes attributable to recreational facilities in the calculation for combined projected tax rate of all overlapping entities, in accordance with SB 624, §7, which adds TWC, §49.466. Section 293.59(i) is adopted to be amended to include taxes attributable to recreational facilities in the calculation for the rebate of taxes to a city or other entity, in accordance with SB 624, §7, which adds TWC, §49.466.

§293.80, Revenue Notes

Section 293.80(a) is adopted to exempt from commission approval revenue notes executed by the North American Development Bank, in accordance with HB 1541, §11, which amends TWC, §49.153(e).

§293.83, District Use of Surplus Funds for Any Purpose and Use of Maintenance Tax Revenue for Certain Purposes

Section 293.83(a) is adopted to reflect that proceeds from the sale of property originally acquired with bond funds are subject to commission rules regarding surplus funds, unless the proceeds are used to retire outstanding bonds of a district, in accordance with HB 1541, §16, which amends TWC, §49.266(d).

§293.113, District and Water Supply Corporations' Authority Over Wastewater Facilities

Section 293.113(a) is adopted to reflect that a district or corporation may not require a property owner who installed an on-site wastewater system before the adoption of the district or corporation's rule to connect to the district or corporation's system, in accordance with HB 1541, §17, which amends TWC, §49.234(a).

§293.201, District Acquisition of Road Utility District Powers and §293.202, Application Requirements for Commission Approval

Sections 293.201 and 293.202 are adopted to reflect that a municipal utility district only needs to petition the commission for road utility district powers, in lieu of the commission and Texas Department of Transportation (TxDOT), in accordance with HB 1541, §29, which amends TWC, §54.234.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rules is to primarily establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49, 54, and 57, as amended by HB 1541, HB 2887, SB 624, and SB 898. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the adopted rules do not exceed a federal standard because no applicable federal standards exist. The adopted rules do not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The adopted rules are not developed solely under the general powers of the agency; but also under the specific authority of TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes. The adopted rules are also specifically developed to implement TWC, §§49.463, 49.4645, and 49.466, as amended by SB 624; to implement TWC, §§49.153, 49.181, 49.234, 49.266, 49.271, and 54.234, as amended by HB 1541; to implement TWC, §49.278, as amended by HB 2887; and to implement TWC, §49.181, as amended by SB 898. The adopted rules do not exceed the express requirements of those state statutes. The commission invited, but received, no public comment on the regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed a preliminary assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to establish new or revise existing requirements relating to the administration of water districts and the commission's supervision over their actions under TWC, Chapters 49 and 54, as amended by HB 1541, HB 2887, SB 624, and SB 898. Promulgation and enforcement of this rulemaking will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on

private real property because the adopted rules neither relate to, nor have any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a preliminary consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rules is to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The CMP policy applicable to the adopted rules requires that the commission's rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water districts under TWC, Chapter 49; water control and improvement districts under TWC, Chapter 51; municipal utility districts under TWC, Chapter 54; regional plan implementation agencies under TWC, Chapter 54; special utility districts under TWC, Chapter 65; storm water control districts under TWC, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the commission comply with the policies in 31 TAC §501.14(m).

The adopted rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The adopted rules, which implement HB 1541, HB 2887, SB 624, and SB 898, amend the existing rules that govern construction and funding of district facilities and that govern the commission's process for reviewing applications for district creation, bond issue, and other district matters.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with the CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers.

The commission invited, but received, no comments on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held November 18, 2004. One oral comment was received from Sam Jones Consulting, Inc. (Jones) supporting the rules. The comment period closed on November 29, 2004 and was extended to December 15, 2004. The commission received five written comments requesting changes to the rules from Allen Boone Humphries, L.L.P. (ABH); Association of Water Board Directors-Texas (AWBD-Texas); Blake Magee Company, L.P. (BMC); Jim Box - Consultant, Inc. (JBC); and Tiemann Land and Cattle Development, Inc. (Tiemann). Oral comments were also received from ABH as a follow-up to their written comments.

RESPONSE TO COMMENTS

§293.41, Approval of Projects and Issuance of Bonds

ABH, AWBD-Texas, BMC, JBC, and Tiemann indicated that the rules should specifically state the types of recreational facilities for which a district can incur debt. ABH, AWBD-Texas, and JBC listed separate items that may and should not be funded by a district as a recreational facility; stated that a district's park plan should be included in a district's application for approval of bonds for recreational facilities; stated that commission rules should reflect that plans and specifications for recreational facilities may be signed by a design professional allowed by law to engage in landscape architecture; and stated that commission rules should reflect greater flexibility for mature (more than 90% of infrastructure financed) districts in funding recreational facilities. BMC and Tiemann submitted similar comments requesting that commission rules reflect that amenity/recreation centers and perimeter walls be allowable items to be funded as recreational facilities.

The commission concurs that the rules should include details about facilities that may and should not be funded as recreational facilities in order to reduce confusion regarding what is acceptable and to save staff time in reviewing an application by reducing debate over the eligibility of an item. Accordingly, the rules are revised to include a detail of items that may be funded and items that may not be funded. As a compromise between the ABH, AWBD-Texas, and JBC comments and BMC and Tiemann comments, the rules allow mature districts to fund amenity/recreation centers and a portion of perimeter fences. The commission concurs that a copy of a district's park plan should be submitted with a bond application and that plans and specifications should be signed by an appropriate design professional. The rules have been revised to reflect such requirements.

§293.44, Special Considerations

ABH, AWBD-Texas, and JBC commented that recreational facilities should be exempt from the 30% developer contribution requirement and that only mature districts should be allowed to fund certain recreational facilities (trails, sidewalks, landscaping, etc.) within the right-of-way required by governmental jurisdictions to be dedicated for streets. The comments from ABH, AWBD-Texas, and JBC expressed a belief that developers should continue to fund those items (sidewalks, landscaping, swimming pools, amenity centers, etc.) that they have historically funded, and that district funding of recreational facilities should be automatically exempt from the 30% developer contribution requirement in order to encourage developers to plan for and build additional recreational facilities. Additionally, comments from ABH expressed that the 1% cap on the debt for recreational facilities to a district's assessed valuation effectively limits what a district can fund and what a developer can be reimbursed.

The commission concurs that funding of recreational facilities should be exempt from the 30% developer contribution requirement in order to encourage the planning for and construction of additional recreational facilities. The commission recognizes that excluding some facilities from district funding, only allowing for mature districts to fund certain facilities, and the 1% cap on debt for recreational facilities to a district's assessed valuation encourages developer participation in funding recreational facilities. Accordingly, the rules have been revised to automatically exempt allowable recreational facilities from the 30% requirement. Additionally, the rules are modified to clarify a conflict with §293.47(d)(12).

§293.51, Land and Easement Acquisition

ABH, AWBD-Texas, and JBC commented that land within the floodplain is worth less than other land, and, in mature districts, often represents the majority of available land for recreational purposes. ABH, AWBD-Texas, and JBC commented that the cost of land in the floodplain should be the lower of the developer's original cost, plus carry or fair market value. Additionally, ABH, AWBD-Texas, and JBC commented that land for regional recreational facility sites should be subject to the same provisions as other regional district sites in order to encourage planning for and construction of regional facilities. BMC and Tiemann commented that the rule referencing recreational facility sites should be expanded to reflect greenbelts, park facilities, trails, etc.

The commission concurs that land within the floodplain is worth less than other land, and that land should be purchased at the lowest possible cost. The commission also concurs that regional facility sites should be subject to the same provisions as regional sites for other district facilities. The rules are modified accordingly. In response to the BMC and Tiemann comment, the commission responds that the reference to recreational facility sites automatically includes sites for allowable projects as detailed in §293.41(e)(2). No change has been made in response to this comment.

Other Comments

ABH, AWBD-Texas, and JBC commented that rules for recreational facilities should be included in a separate subchapter, and that funding of recreational facilities should not be subject to all of the provisions in Subchapter F, District Actions Related to Construction Projects and Purchase of Facilities.

The commission made no changes in response to these comments. The rules for funding recreational facilities have been incorporated into the existing subchapters. The concept of a separate subchapter setting forth rules for recreational funding is not opposed, however, to do so at this time would cause significant delays in this rulemaking. The commission determined that the Subchapter F requirements should apply to recreational facilities in the same manner as those rules that apply to other district projects.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §293.1

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624; and TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501561
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 239-5017

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SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) $700 nonrefundable application fee;

(2) if a proposed district's purpose is to supply fresh water for domestic or commercial use or to provide wastewater services, roadways, or drainage, a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Local Government Code, §42.042. If the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, §42.042, have been followed;

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) evidence that the application conforms substantially to the city consent; provided, however, that nothing herein shall prevent the commission from creating a district with less land than included in the city consent;

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e);

(4) a statement by the appropriate secretary or clerk that a copy of the petition for creation of the proposed district was received by any city in whose corporate limits any part of the proposed district is located;

(5) evidence of submitting a creation petition and report to the appropriate commission regional office;

(6) if substantial development is proposed, a market study and a developer's financial statement;

(7) if the petitioner is a corporation, trust, partnership, or joint venture, a certificate of corporate authorization to sign the petition, a certificate of the trustee's authorization to sign the petition, a copy of the partnership agreement or a copy of the joint venture agreement, as appropriate, to evidence that the person signing the petition is authorized to sign the petition on behalf of the corporation, trust, partnership, or joint venture;

(8) a vicinity map;

(9) unless waived by the executive director, for districts where substantial development is proposed, a certification by the petitioning landowners that those lienholders who signed the petition or a separate document consenting to the petition, or who were notified by certified mail, are the only persons holding liens on the land described in the petition;

(10) if the petitioner anticipates recreational facilities being an intended purpose, a detailed summary of the proposed recreational facility projects, projects' estimated costs, and proposed financing methods for the projects as part of the preliminary engineering report; and

(11) other related information as required by the executive director.

(b) Creation application requirements and procedures for TWC, Chapter 36, Groundwater Conservation Districts are provided in Subchapter C of this chapter (relating to Special Requirements for Groundwater Conservation Districts).

(c) Creation applications for TWC, Chapter 51, Water Control and Improvement Districts within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition as required by TWC, §51.013, requesting creation signed by the majority of persons holding title to land representing a total value of more than 50% of value of all land in the proposed district as indicated by tax rolls of the central appraisal district, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district;

(C) constitutional authority;

(D) purpose(s) of district;

(E) statement of the general nature of work and necessity and feasibility of project with reasonable detail; and

(F) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries, metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, will benefit all of the land and residents to be included in the district, and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §51.072;

(8) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title (relating to Application Requirements for Fire Department Plan Approval), except for a certified copy of a district board resolution,

references to a district board having adopted a plan, and the additional $100 filing fee; and

(9) other information as required by the executive director.

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §54.014 and §54.015, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by tax rolls of the central appraisal district. If there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries of district described by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(C) necessity for the work;

(D) statement of the general nature of work proposed; and

(E) statement of estimated cost of project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(5) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) a certified copy of the action of the governing body of any municipality in whose corporate limits or extraterritorial jurisdiction that the proposed district is located, consenting to the creation of the proposed district under TWC, §54.016. For districts to be located in the extraterritorial jurisdiction of any municipality, if the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of TWC, §54.016 have been followed;

(8) for districts proposed to be created within the corporate boundaries of a municipality, evidence that the city will rebate to the district an equitable portion of city taxes to be derived from the residents of the area proposed to be included in the district if such taxes are used by the city to finance elsewhere in the city services of the type the district proposes to provide. If like services are not to be provided, then an agreement regarding a rebate of city taxes is not necessary. Nothing in this subsection is intended to restrict the contracting authorization provided in Local Government Code, §402.014;

(9) affidavits by those persons desiring appointment by the commission as temporary directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary directors, in accordance with TWC, §49.052 and §54.102;

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(11) other data and information as the executive director may require.

(e) Creation applications for TWC, Chapter 55, Water Improvement Districts, within two or more counties shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §55.040, signed by persons holding title to more than 50% of all land in the proposed district as indicated by county tax rolls, or by 50 qualified property taxpaying electors. The petition shall include the following:

(A) name of district; and

(B) area and boundaries of district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water, wastewater, or drainage facilities;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates;

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(H) an evaluation of the effect the district and its systems and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(I) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(J) complete justification for creation of the district supported by evidence that the project is practicable, would be a public utility, and would serve a beneficial purpose;

(5) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other data and information as the executive director may require.

(f) Creation applications for TWC, Chapter 58, Irrigation Districts, within two or more counties, shall contain items listed in subsection (a) of this section and the following:

(1) a petition containing the matters required by TWC, §58.013 and §58.014, signed by persons holding title to land representing a total value of more than 50% of the value of all land in the proposed district as indicated by county tax rolls, or if there are more than 50 persons holding title to land in the proposed district, the petition can be signed by 50 of them. The petition shall include the following:

(A) name of district;

(B) area and boundaries;

(C) provision of the Texas Constitution under which district will be organized;

(D) purpose(s) of district;

(E) statement of the general nature of the work to be done and the necessity, feasibility, and utility of the project, with reasonable detail; and

(F) statement of the estimated costs of the project;

(2) evidence that the petition was filed with the office of the county clerk of the county(ies) in which the district or portions of the district are located;

(3) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing as applicable the location of existing facilities including highways, roads, and other improvements, together with the location of proposed irrigation facilities, general drainage patterns, principal drainage ditches and structures, sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project;

(5) a preliminary engineering report including the following as applicable:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan, including a table showing irrigable and non-irrigable acreage;

(C) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(D) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(E) proposed budget including projected tax rate and/or fee schedule and rates;

(F) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(G) an evaluation of the effect the district and its systems will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality;

(H) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(I) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land and residents to be included in the district and will further the public welfare;

(6) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(7) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §58.072; and

(8) other data as the executive director may require.

(g) Creation applications for TWC, Chapter 59, Regional Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a petition, as required by TWC, §59.003, signed by the owner or owners of 2,000 contiguous acres or more; or by the county commissioners court of one, or more than one, county; or by any city whose boundaries or extraterritorial jurisdiction the proposed district lies within; or by 20% of the municipal districts to be included in the district. The petition shall contain:

(A) a description of the boundaries by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area;

(B) a statement of the general work, and necessity of the work;

(C) estimated costs of the work;

(D) name of the petitioner(s);

(E) name of the proposed district; and

(F) if submitted by at least 20% of the municipal districts to be included in the regional district, such petition shall also include:

(i) a description of the territory to be included in the proposed district; and

(ii) endorsing resolutions from all municipal districts to be included;

(2) evidence that a copy of the petition was filed with the city clerk in each city where the proposed district's boundaries cover in whole or part;

(3) if land in the corporate limits or extraterritorial jurisdiction of a city is proposed, documentation of city consent or documentation of having followed the process outlined in TWC , §59.006;

(4) a preliminary engineering report including as appropriate:

(A) a description of existing area, conditions, topography, and proposed improvements;

(B) land use plan;

(C) 100-year flood computations or source of information;

(D) existing and projected populations;

(E) tentative itemized cost estimates of the proposed capital improvements and itemized cost summary for anticipated bond issue requirement;

(F) projected tax rate and water and wastewater rates; and

(G) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(5) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, as required by TWC, §49.052 and §59.021;

(6) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(7) other information as the executive director may require.

(h) Creation applications for TWC, Chapter 65, Special Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) a certified copy of the resolution requesting creation, as required by TWC, §65.014 and §65.015, signed by the president and secretary of the board of directors of the water supply or sewer service corporation, and stating that the corporation, acting through its board of directors, has found that it is necessary and desirable for the corporation to be converted into a district. The resolution shall include the following:

(A) a description of the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area, or by any other commonly recognized means in a certificate attached to the resolution executed by a licensed engineer;

(B) a statement regarding the general nature of the services presently performed and proposed to be provided, and the necessity for the services;

(C) name of the district;

(D) the names of not less than five and not more than 11 qualified persons to serve as the initial board; and

(E) if the proposed district also seeks approval of an impact fee, a request for approval of an impact fee and the amount of the requested fee;

(2) the legal description accompanying the resolution requesting conversion of a water supply or sewer service corporation, as defined in TWC, §65.001(10), to a special utility district that conforms to the legal description of the service area of the corporation as such service area appears in the certificate of public convenience and necessity held by the corporation. Any area of the corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district;

(3) a plat showing boundaries of the proposed district as described in the petition;

(4) a preliminary plan (22 - 24 inches by 36 inches or digital data in electronic format) showing the location of existing facilities including highways, roads, and other improvements, together with the location of proposed utility mains and sizing, general drainage patterns, principal drainage ditches and structures, utility plant sites, recreational areas, commercial and school sites, areas within the 100-year flood plain and 100-year floodway, and any other information pertinent to the project including an inventory of any existing water or wastewater facilities;

(5) a preliminary engineering report including the following information unless previously provided to the commission:

(A) a description of existing area, conditions, topography, and any proposed improvements;

(B) existing and projected populations;

(C) for proposed system expansion:

(i) tentative itemized cost estimates of any proposed capital improvements and itemized cost summary for any anticipated bond issue requirement;

(ii) an investigation and evaluation of the availability of comparable service from other systems including, but not limited to, water districts, municipalities, and regional authorities;

(D) water and wastewater rates;

(E) projected water and wastewater rates;

(F) an evaluation of the effect the district and its system and subsequent development within the district will have on the following:

(i) land elevation;

(ii) subsidence;

(iii) groundwater level within the region;

(iv) recharge capability of a groundwater source;

(v) natural run-off rates and drainage; and

(vi) water quality; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;

(6) a certified copy of a certificate of convenience and necessity held by the water supply or sewer service corporation applying for conversion to a special utility district;

(7) a certified copy of the most recent financial report prepared by the water supply or sewer service corporation;

(8) if requesting approval of an existing capital recovery fee or impact fee, supporting calculations and required documentation regarding such fee;

(9) certified copy of resolution and an order canvassing election results, adopted by the water supply or sewer service corporation, which shows:

(A) an affirmative vote of a majority of the membership to authorize conversion to a special utility district operating under TWC, Chapter 65; and

(B) a vote by the membership in accordance with the requirements of TWC , Chapter 67, and the Texas Non-Profit Corporation Act, Texas Civil Statutes, Articles 1396-1.01 to 1396-11.01, to dissolve the water supply or sewer service corporation at such time as creation of the special utility district is approved by the commission and convey all the assets and debts of the corporation to the special utility district upon dissolution;

(10) affidavits by those persons named in the resolution for appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §65.102, where applicable;

(11) affidavits indicating that the transfer of the assets and the certificate of convenience and necessity has been properly noticed to the executive director and customers in accordance with §291.109 of this title (relating to Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction) and §291.112 of this title (relating to Transfer of Certificate of Convenience and Necessity);

(12) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; and

(13) other information as the executive director requires.

(i) Creation applications for TWC, Chapter 66, Stormwater Control Districts, shall contain items listed in subsection (a) or this section and the following:

(1) a petition as required by TWC, §§66.014 - 66.016, requesting creation of a storm water control district signed by at least 50 persons who reside within the boundaries of the proposed district or signed by a majority of the members of the county commissioners court in each county or counties in which the district is proposed. The petition shall include the following:

(A) a boundary description by metes and bounds or lot and block number if there is a recorded map or plat and survey;

(B) a statement of the general nature of the work proposed and an estimated cost of the work proposed; and

(C) the proposed name of the district;

(2) a map showing the district boundaries in metes and bounds, area, physical culture, and computation sheet for survey closure;

(3) a preliminary engineering report including:

(A) a description of the existing area, conditions, topography, and proposed improvements;

(B) preliminary itemized cost estimate for the proposed improvements and associated plans for financing such improvements;

(C) a listing of other entities capable of providing same or similar services and reasons why those are unable to provide such services;

(D) copies of any agreements, meeting minutes, contracts, or permits executed or in draft form with other entities including, but not limited to, federal, state, or local entities or governments or persons;

(E) an evaluation of the effect the district and its projects will have on the following:

(i) land elevations;

(ii) subsidence/groundwater level and recharge;

(iii) natural run-off rates and drainage; and

(iv) water quality;

(F) a table summarizing overlapping taxing entities and the most recent tax rates by those entities; and

(G) complete justification for creation of the district supported by evidence that the project is feasible, practical, necessary, and will benefit all the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as temporary or initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for temporary or initial directors, in accordance with TWC, §49.052 and §66.102, where applicable; and

(5) other data as the executive director may require.

(j) Creation applications for Local Government Code, Chapter 375, Municipal Management Districts in General, shall contain the items listed in subsection (a) of this section and the following:

(1) a petition requesting creation signed by owners of a majority of the assessed value of real property in the proposed district, or 50 persons who own property in the proposed district, if more than 50 people own real property in the proposed district. The petition shall include the following:

(A) a boundary description by metes and bounds, or lot and block number if there is a recorded map or plat and survey;

(B) purpose(s) for which district is being created;

(C) general nature of the work, projects or services proposed to be provided, the necessity for those services, and an estimate of the costs associated with such;

(D) name of proposed district, which must be generally descriptive of the location of the district, followed by "Management District";

(E) list of proposed initial directors and experience and term of each; and

(F) a resolution of municipality in support of creation, if inside a city;

(2) a preliminary plan or report providing sufficient details on the purpose and projects of district as allowed in Local Government Code, Chapter 375, including budget, statement of expenses, revenues, and sources of such revenues;

(3) a certificate by the central appraisal district indicating the owners and tax valuation of land within the proposed district as reflected on the county tax rolls as of the date of the petition or any amended petition. If the tax rolls do not show the petitioner(s) to be the owners of the majority of value of the land within the proposed district, then the petitioner(s) shall submit to the executive director a certified copy of the deed(s) tracing title from the person(s) listed on the central appraisal district certificate as owners of the land to the petitioner(s) and any additional information required by the executive director necessary to show accurately the ownership of the land to be included in the district;

(4) affidavits by those persons desiring appointment by the commission as initial directors, showing compliance with applicable statutory requirements of qualifications and eligibility for initial directors, in accordance with Local Government Code, §375.063; and

(5) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501562
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: October 29, 2004
For further information, please call: (512) 239-5017

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §§293.41, 293.44, 293.51, 293.59

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution; and under TWC, §49.466, which requires the commission to adopt rules regarding the provision and financing of recreational facilities funded through the issuance of bonds that are supported by ad valorem taxes.

The adopted amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by SB 624, SB 898, HB 1541, and HB 2887.

§293.41. Approval of Projects and Issuance of Bonds.

(a) Bonds, as referred to in this subchapter, include any bonds authorized to be issued by the Texas Water Code (TWC) or special statute, and are represented by an instrument issued in bearer or registered form. This section does not apply to:

(1) refunding bonds, if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities; or

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development Board, or successor agencies.

(b) This subchapter does apply to revenue notes to the extent described in §293.80(d) of this title (relating to Revenue Notes) and contract tax obligations to the extent described in §293.89 of this title (relating to Contract Tax Obligations).

(c) The commission has the statutory responsibility to approve projects relating to the issuance and sale of bonds for districts as defined in TWC, §49.001(1), and other districts where specifically required by law.

(d) This subchapter does not apply to a district if:

(1) the boundaries include one entire county;

(2) the district was created by a special act of the legislature; and

(A) the district is located entirely within one county and entirely within one or more home-rule municipalities;

(B) the total taxable value of the real property and improvements to the real property, zoned by one or more home-rule municipalities for residential purposes and located within the district, does not exceed 25% of the total taxable value of all taxable property in the district, as shown by the most recent certified appraisal tax roll prepared by the appraisal district for the county; and

(C) the district was not required by law to obtain commission approval of its bonds before September 1, 1995;

(3) the district is a special water authority as defined by TWC, §49.001(8);

(4) the district is governed by a board of directors appointed in whole or part by the governor, a state agency, or the governing body or chief elected official of a municipality or county and does not provide, or propose to provide, water, wastewater, drainage, reclamation, or flood control services to residential retail or commercial customers as its principal function; or

(5) the district:

(A) is a municipal utility district operating under TWC, Chapter 54, that includes territory in only two counties;

(B) has outstanding long-term indebtedness that is rated BBB or better by a nationally recognized rating agency for municipal securities; and

(C) has at least 5,000 active water connections.

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) Bond applications submitted under this subsection must include a copy of a district's park plan as required under TWC, §49.4645(b), in addition to other application requirements under §293.43 of this title (relating to Application Requirements). The park plan is to be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

(2) Bond applications submitted under this subsection may include:

(A) forests, greenbelts, open spaces, and native habitat;

(B) sidewalks, trails, paths, boardwalks, and fitness trail equipment, subject to the following restrictions:

(i) the sidewalks, trails, paths, boardwalks, and fitness trail equipment unrelated to golf courses;

(ii) the sidewalks, trails, paths, boardwalks, and fitness trail equipment located outside of the right-of-way required by applicable government agencies for streets, unless a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district; and

(iii) if a district has completed and financed at least 90% of its projected water, wastewater, and drainage facilities to serve residential development within the district prior to the annexation of land, the location restriction in clause (ii) of this subparagraph only applies to annexed land;

(C) pedestrian bridges and underpasses that are less than 200 feet in length and not related to golf courses;

(D) outdoor ballfields, including, but not limited to, soccer, football, baseball, softball, and lacrosse, outdoor skate/roller blade facilities, associated scoreboards, and bleachers designed for less than 500 people per field or per skate/roller blade facility;

(E) parks (outdoor playground facilities and associated ground surface material, picnic tables, benches, barbeque grills, fire pits, fireplaces, trash receptacles, drinking water fountains, open-air pavilions/gazebos, open-air amphitheaters/assembly facilities designed for less than 500 people, open-air shade structures, restrooms and changing rooms, concession stands, water playgrounds, recreational equipment storage facilities, and emergency call boxes);

(F) amenity lakes, and associated water features, docks, piers, overlooks, and non-motorized boat launches subject to §293.44(a)(24) of this title (relating to Special Considerations);

(G) amenity/recreation centers, outdoor tennis courts, and outdoor basketball courts if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district;

(H) fences no higher than eight feet that are located within public right-of-way or district sites/easements and are along streets if the district has funded water, wastewater, and drainage facilities to serve at least 90% of the residential development within the district; and

(I) landscaping (including, but not limited to, trees, shrubs, and berms) and associated irrigation, fences, information signs/kiosks, lighting (except street lighting), and parking related to items listed in subparagraphs (A) through (G) of this paragraph.

(3) Bond applications submitted under this subsection shall not include:

(A) indoor or outdoor swimming pools, pool decks, and associated equipment or storage facilities;

(B) golf courses, clubhouses, and related structures or facilities;

(C) air conditioned buildings, gymnasiums, spas, fitness centers, and habitable structures, except as allowed in paragraph (2) of this subsection;

(D) sound barrier walls;

(E) retaining walls used for roadway purposes;

(F) fences, such as for subdivisions and lots, which are not related to district facilities, except as allowed in paragraph (2) of this subsection;

(G) signs and monuments, such as for subdivisions and developments, which are not related to district facilities; and

(H) street lighting.

(4) A district's outstanding principal debt (bonds, notes, and other obligations), payable from any source, for recreational facilities must not exceed 1% of the taxable value of property in the district, as supported by a certificate from the central appraisal district, at the time of issuance of the debt or exceed the estimated cost provided in the park plan required under TWC, §49.4645(b), whichever is smaller.

(5) A district may submit a bond application that proposes to fund recreational facilities only after or at the same time a district has funded water, wastewater, and/or drainage facilities, depending on a district's authorized functions, to serve the section that includes the recreational facilities or to serve areas along roads that are either adjacent to the recreational facilities or are necessary to provide access to the recreational facilities.

(6) Plans and specifications for recreational facilities must be signed and sealed by a registered landscape architect, a registered professional engineer, or any other design professional allowed by law to engage in landscape architecture.

§293.44. Special Considerations.

(a) Developer projects. The following provisions shall apply unless the commission, in its discretion, determines that application to a particular situation renders an inequitable result.

(1) A developer project is a district project that provides water, wastewater, drainage, or recreational facility service for property owned by a developer of property in the district, as defined by Texas Water Code (TWC), §49.052(d).

(2) Except as permitted under paragraph (8) of this subsection, the costs of joint facilities that benefit the district and others should be shared on the basis of benefits received. Generally, the benefits are the design capacities in the joint facilities for each participant. Proposed cost sharing for conveyance facilities should account for both flow and inflow locations.

(3) The cost of clearing and grubbing of district facilities' easements that will also be used for other facilities that are not eligible for district expenditures, such as roads, gas lines, telephone lines, etc., should be shared equally by the district and the developer, except where unusually wide road or street rights-of-way or other unusual circumstances are present, as determined by the commission. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title (relating to Thirty Percent of District Construction Costs to be Paid by Developer). The applicability of the competitive bidding statutes and/or regulations for clearing and grubbing contracts let and awarded in the developer's name shall not apply when the amount of the estimated district share, including any required developer contribution does not exceed 50% of the total construction contract costs.

(4) A district may finance the cost of spreading and compacting of fill in areas that require the fill for development purposes, such as in abandoned ditches or floodplain areas, only to the extent necessary to dispose of the spoil material (fill) generated by other projects of the district.

(5) The cost of any clearing and grubbing in areas where fill is to be placed should not be paid by the district, unless the district can demonstrate a net savings in the costs of disposal of excavated materials when compared to the estimated costs of disposal off site.

(6) When a developer changes the plan of development requiring the abandonment or relocation of existing facilities, the district may pay the cost of either the abandoned facilities or the cost of replacement facilities, but not both.

(7) When a developer changes the plan of development requiring the redesign of facilities that have been designed, but not constructed, the district may pay the cost of the original design or the cost of the redesign, but not both.

(8) A district shall not finance the pro rata share of oversized water, sewer, or drainage facilities to serve areas outside the district unless:

(A) such oversizing:

(i) is required by or represents the minimum approvable design sizes prescribed by local governments or other regulatory agencies for such applications;

(ii) does not benefit out-of-district land owned by the developer;

(iii) does not benefit out-of-district land currently being developed by others; and

(iv) the district agrees to use its best efforts to recover such costs if a future user outside the district desires to use such capacity; or

(B) the district has entered into an agreement with the party being served by such oversized capacity that provides adequate payment to the district to pay the cost of financing, operating, and maintaining such oversized capacity; or

(C) the district has entered into an agreement with the party to be served or benefitted in the future by such oversized capacity, which provides for contemporaneous payment by such future user of the incremental increase in construction and engineering costs attributable to such oversizing and which, until the costs of financing, construction, operation, and maintenance of such oversized facilities are prorated according to paragraph (2) of this subsection, provides that:

(i) the capacity or usage rights of such future user shall be restricted to the design flow or capacity of such oversized facilities multiplied by the fractional engineering and construction costs contemporaneously paid by such future user; and

(ii) such future user shall pay directly allocable operation and maintenance costs proportionate to such restricted capacity or usage rights.

(9) Railroad, pipeline, or underground utility relocations that are needed because of road crossings should not be financed by the district; however, if such relocations result from a simultaneous district project and road crossing project, then such relocation costs should be shared equally. The district's share of such costs is further subject to any required developer contribution under §293.47 of this title.

(10) Engineering studies, such as topographic surveys, soil studies, fault studies, boundary surveys, etc., that contain information that will be used both for district purposes and for other purposes, such as roadway design, foundation design, land purchases, etc., should be shared equally by the district and the developer, unless unusual circumstances are present as determined by the commission. The district's

share of such costs is further subject to any required developer contribution under §293.47 of this title.

(11) Land planning, zoning, and development planning costs should not be paid by the district, except for conceptual land-use plans required to be filed with a city as a condition for city consent to creation of the district.

(12) The cost of constructing lakes or other facilities that are part of the developer's amenities package should not typically be paid by the district; however, the costs for the portion of an amenity lake considered a recreational facility under paragraph (24) of this subsection may be funded by the district. The cost of combined lake and detention facilities should be shared with the developer on the basis of the volume attributable to each use, and land costs should be shared on the same basis, unless the district can demonstrate a net savings in the cost of securing fill and construction materials from such lake or detention facilities, when compared to the costs of securing such fill or construction materials off site for another eligible project.

(13) Bridge and culvert crossings shall be financed in accordance with the following provisions.

(A) The costs of bridge and culvert crossings needed to accommodate the development's road system shall not be financed by a district, unless such crossing consists of one or more culverts with a combined cross-sectional area of not more than nine square feet. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(B) Districts may fund the costs of bridge and culvert crossings needed to accommodate the development's road system that are larger than those specified in subparagraph (A) of this paragraph, which cross channels other than natural waterways with defined bed and banks and are necessary as a result of required channel improvements subject to the following limitations:

(i) the drainage channel construction or renovation must benefit property within the district's boundaries;

(ii) the costs shall not exceed a pro rata share based on the percent of total drainage area of the channel crossed, measured at the point of crossing, calculated by taking the total cost of such bridge or culvert crossing multiplied by a fraction, the numerator of which is the total drainage area located within the district upstream of the crossing, and the denominator of which is the total drainage area upstream of the crossing; and

(iii) the district shall be responsible for not more than 50% of the pro rata share as calculated under this subsection, subject to the developer's 30% contribution as may be required by §293.47 of this title.

(C) The cost of replacement of existing bridges and culverts not constructed or installed by the developer, or the cost of new bridges and culverts across existing roads not financed or constructed by the developer, may be financed by the district, except that any costs of increasing the traffic-carrying capacity of bridges or culverts shall not be financed by the district.

(14) In evaluating district construction projects, including those described in paragraphs (1) - (12)of this subsection, primary consideration shall be given to engineering feasibility and whether the project has been designed in accordance with good engineering practices, notwithstanding that other acceptable or less costly engineering alternatives may exist.

(15) Bond issue proceeds will not be used to pay or reimburse consultant fees for the following:

(A) special or investigative reports for projects which, for any reason, have not been constructed and, in all probability, will not be constructed;

(B) fees for bond issue reports for bond issues consisting primarily of developer reimbursables and approved by the commission but which are no longer proposed to be issued;

(C) fees for completed projects which are not and will not be of benefit to the district; or

(D) provided, however, that the limitations shall not apply to regional projects or special or investigative reports necessary to properly evaluate the feasibility of alternative district projects.

(16) Bond funds may be used to finance costs and expenses necessarily incurred in the organization and operation of the district during the creation and construction periods as follows.

(A) Such costs were incurred or projected to incur during creation, and/or construction periods which include periods during which the district is constructing its facilities or there is construction by third parties of aboveground improvements within the district.

(B) Construction periods do not need to be continuous; however, once reimbursement for a specific time period has occurred, expenses for a prior time period are no longer eligible. Payment of expenses during construction periods is limited to five years in any single bond issue.

(C) Any reimbursement to a developer with bond funds is restricted to actual expenses paid by the district during the same five-year period for which application is made in accordance with this subsection.

(D) The district may pay interest on the advances under this paragraph. Section 293.50 of this title (relating to Developer Interest Reimbursement) applies to interest payments for a developer and such payments are subject to a developer reimbursement audit.

(17) In instances where creation costs to be paid from bond proceeds are determined to be excessive, the executive director may request that the developer submit invoices and cancelled checks to determine whether such creation costs were reasonable, customary, and necessary for district creation purposes. Such creation costs shall not include planning, platting, zoning, other costs prohibited by paragraphs (10) and (14) of this subsection, and other matters not directly related to the district's water, sewage, and drainage system, even if required for city consent.

(18) The district shall not purchase, pay for, or reimburse the cost of facilities, either completed or incomplete, from which it has not and will not receive benefit, even though such facilities may have been at one time required by a city or other entity having jurisdiction.

(19) The district shall not enter into any binding contracts with a developer that compel the district to become liable for costs above those approved by the commission.

(20) A district shall not purchase more water supply or wastewater treatment capacity than is needed to meet the foreseeable capacity demands of the district, except in circumstances where:

(A) lease payments or capital contributions are required to be made to entities owning or constructing regional water supply or wastewater treatment facilities to serve the district and others;

(B) such purchases or leases are necessary to meet minimum regulatory standards; or

(C) such purchases or leases are justified by considerations of economic or engineering feasibility.

(21) The district may finance those costs, including mitigation, associated with flood plain regulation and wetlands regulation, attributable to the development of water plants, wastewater treatment plants, pump and lift stations, detention/retention facilities, drainage channels, and levees. The district's share shall not be subject to the developer's 30% contribution as may be required by §293.47 of this title.

(22) The district may finance those costs associated with endangered species permits. Such costs shall be shared between the district and the developer with the district's share not to exceed 70% of the total costs, unless unusual circumstances are present as determined by the commission. The district's share shall not be subject to the developer's 30% contribution under §293.47 of this title. For purposes of this subsection, "endangered species permit" means a permit or other authorization issued under §7 or §10(a) of the federal Endangered Species Act of 1973, 16 United States Code, §1536 and §1539(a).

(23) The district may finance 100% of those costs associated with federal storm water permits. The district's share shall be subject to the developer's 30% contribution as may be required by §293.47 of this title. For purposes of this subsection, "federal storm water permit" means a permit for storm water discharges issued under the federal Clean Water Act, including National Pollutant Discharge Elimination System permits issued by the United States Environmental Protection Agency and Texas Pollutant Discharge Elimination System permits issued by the commission.

(24) The district may finance the portion of an amenity lake project that is considered a recreational facility.

(A) The portion considered a recreational facility must be accessible to all persons within the district and is determined as:

(i) the percentage of shoreline with at least a 30-foot wide buffer between the shoreline and private property; or

(ii) the percentage of the perimeter of a high bank of a combination detention facility and lake with at least a 30-foot wide buffer between the high bank and private property.

(B) The district's share of costs for the portion of an amenity lake project that is considered a recreational facility is not subject to the developer's 30% contribution under §293.47 of this title.

(C) The authority for districts to fund recreational amenity lake costs in accordance with this paragraph does not apply retroactively to projects included in bond issues submitted to the commission prior to the effective date of this paragraph.

(b) All projects.

(1) The purchase price for existing facilities not covered by a preconstruction agreement or otherwise not constructed by a developer in contemplation of resale to the district, or if constructed by a developer in contemplation of resale to the district and the cost of the facilities is not available after demonstrating a good faith effort to locate the cost records should be established by an independent appraisal by a registered professional engineer hired by the district. The appraised value should reflect the cost of replacement of the facility, less repairs and depreciation, taking into account the age and useful life of the facility and economic and functional obsolescence as evidenced by an on-site inspection.

(2) Contract revenue bonds proposed to be issued by districts for facilities providing water, sewer, or drainage, under contracts authorized under Local Government Code, §402.014, or other similar statutory authorization, will be approved by the commission only when the city's pro rata share of debt service on such bonds is sufficient to pay for the cost of the water, sewer, or drainage facilities proposed to serve areas located outside the boundaries of the service area of the issuing district.

(3) When a district proposes to obtain water or sewer service from a municipality, district, or other political subdivision and proposes to use bond proceeds to compensate the providing political subdivision for the water or sewer services on the basis of a capitalized unit cost, e.g., per connection, per lot, or per acre, the commission will approve the use of bond proceeds for such compensation under the following conditions:

(A) the unit cost is reasonable;

(B) the unit cost approximates the cost to the entity providing the necessary facilities, or providing the entity has adopted a uniform service plan for such water and sewer services based on engineering studies of the facilities required; and

(C) the district and the providing entity have entered into a contract that will:

(i) specifically convey either an ownership interest in or a specified contractual capacity or volume of flow into or from the system of the providing entity;

(ii) provide a method to quantify the interest or contractual capacity rights;

(iii) provide that the term for such interest or contractual capacity right is not less than the duration of the maturity schedule of the bonds; and

(iv) contain no provisions that could have the effect of subordinating the conveyed interest or contractual capacity right to a preferential use or right of any other entity.

(4) A district may finance those costs associated with recreational facilities, as defined in §293.1(c) of this title (relating to Objective and Scope of Rules; Meaning of Certain Words) and as detailed in §293.41(e)(2) of this title (relating to Approval of Projects and Issuance of Bonds) for all affected districts that benefit and are available to all persons within the district. A district's financing, whether from tax-supported or revenue debt, of costs associated with recreational facilities is subject to §293.41(e)(1) - (6) of this title and is not subject to the developer's 30% contribution as may be required by §293.47 of this title. The automatic exemption from the developer's 30% requirement provided herein supersedes any conflicting provision in §293.47(d) of this title. In planning for and funding recreational facilities, consideration is to be given to existing and proposed municipal and/or county facilities as required by TWC, §49.465, and to the requirement that bonds supported by ad valorem taxes may not be used to finance recreational facilities, as provided by TWC, §49.464(a), except as allowed in TWC, §49.4645.

(5) The bidding requirements established in TWC, Chapter 49, Subchapter I are not applicable to contracts or services related to a district's use of temporary erosion-control devices or cleaning of silt and debris from streets and storm sewers.

(6) A district's contract for construction work may include economic incentives for early completion of the work or economic disincentives for late completion of the work. The incentive or disincentive must be part of the proposal prepared by each bidder before the bid opening.

§293.51. Land and Easement Acquisition.

(a) Water, sanitary sewer, storm sewer, drainage, and recreational facilities easements. All easements required within a district's

boundaries for water lines; sanitary sewer lines; storm sewer lines; sanitary control at water plants; noise and odor control at wastewater treatment plants; the right-of-way necessary for a drainage swale or ditch constructed generally along a street or road in lieu of a storm sewer; recreational facilities; and the right-of-way area required by governmental jurisdictions for streets that are used for recreational facilities, shall be dedicated to the district or the public by the developer without payment or reimbursement from the district. If any easements are required for such facilities on land not owned by a developer in the district, the district may acquire such land at its appraised market value, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land, and §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) shall not apply to such acquisition.

(b) Land acquisition. A district may acquire the following in fee simple from any person, including the developer, in accordance with this section, and §293.47 of this title shall not apply to such acquisition:

(1) plant sites, including required sanitary control at water plants and noise and odor control at wastewater treatment plants;

(2) lift or pump station sites;

(3) drainage channels other than those described in subsection (a) of this section and other than those which are natural waterways with defined bed and banks;

(4) detention/retention pond sites;

(5) levees;

(6) mitigation sites for compliance with flood plain regulation and wetlands regulation or payments in lieu of mitigation;

(7) mitigation sites for compliance with endangered species permits or payments in lieu of mitigation, the cost of which shall be shared between the district and the developer as provided in §293.44(a)(22) of this title (relating to Special Considerations); or

(8) recreational facility sites that are outside of the right-of-way required by governmental jurisdictions to be dedicated for streets and roads.

(c) Price of land acquisition.

(1) If a district acquires such a site, as described in subsection (b) of this section, which is outside of the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be determined by adding to the price paid by the developer for such land or easement in a bona fide transaction between unrelated parties the developer's actual taxes and interest paid to the date of acquisition by the district. The interest rate shall not exceed the net effective interest rate on the bonds sold, or the interest rate actually paid by the developer for loans obtained for this purpose, whichever is less. If a developer uses its own funds rather than borrowed funds, the net effective interest rate on the bonds sold shall be applied. Provided, however, if the executive director determines that such price appears to exceed the fair market value of such land or easement, the executive director may require an appraisal to be obtained by the district from a qualified independent appraiser and payment to the seller may be limited to the fair market value of such land as shown by the appraisal; if the seller acquired the land after the improvements to be financed by the district were constructed, the price shall be limited to the fair market value of such land or easement established without the improvements being constructed; or if the seller acquired the land more than five years before the creation of the district and the records relating to the actual price paid and the taxes and interest costs are impossible or difficult to obtain, the district, upon executive director approval, may purchase such site at fair market value based on an appraisal prepared by a qualified, independent appraiser. If the land or easement needed by the district is being acquired based on the appraised value, the application to the commission for approval to purchase such a site must contain a request by the district to acquire the site in such manner and must explain the reason that the seller is unable to provide the price and carrying cost records.

(2) If a district acquires such a site, as described in subsection (b) of this section, which is within the 100-year floodplain, from a developer within the district or subsequent owner of developer reimbursables, the price shall be the lesser of the amount as determined by subsection (c)(1) of this section or fair market value based on an appraisal prepared by a qualified, independent appraiser hired by the district's board upon their initiative.

(3) If the land or easement needed by the district is being acquired from an entity other than a developer or subsequent owner of developer reimbursables in the district, the district may pay the fair market value established by a qualified, independent appraiser, and may also pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land or easement.

(d) Joint storm water detention/water amenity facilities. If a detention or retention pond is also being used as an amenity by the developer or as a recreational facility as described in §293.44(a)(24) of this title, payment to the developer shall be limited to that cost that is associated only with the drainage or recreational function of the facility. The land costs of combined water amenity and detention facilities should be shared with the developer on the basis of the volume of water storage attributable to each use, with the water amenity portion subject to reimbursement as a recreational facility in the percentage described in §293.44(a)(24) of this title.

(e) Land or easements outside the district's boundaries. Land or easements needed for any district facilities outside the district's boundaries may be purchased by the district as part of the district project at a price not to exceed the fair market value thereof. The district may also pay legal, engineering, surveying, or court fees and expenses spent in acquiring such land. If the land or easements are purchased from a developer who owns land within the district, the price paid by the district shall be determined in accordance with subsection (c) of this section and such purchase price shall be subject to the provisions of §293.47 of this title unless the facilities constructed in, on, or over such land, easements, or rights-of-way are exempt from such contribution or the district is exempt from such contribution under the terms of §293.47 of this title.

(f) Shared land or easements outside the district's boundaries. If the out-of-district land or easement is required for a drainage channel downstream of the district and a portion of such land or easement is or will be needed by another district(s), whether upstream or downstream, for development, the district shall only pay for its proportionate share of the land costs based upon the acreage of the drainage area contributing drainage to such drainage channel at full development. However, in the event there is no developer in another district(s) to dedicate the district's pro rata share of the required land, the district may pay the entire cost to acquire such land, but the commission shall order the other district(s) to reimburse the district at such time as development occurs in the other district that requires such drainage right-of-way.

(g) Regional facilities. A district may use bond proceeds to acquire the entire site for any regional plant, lift or pump sation, detention pond, drainage channel, levee, or recreational facility if the commission determines that regionalization will be promoted and the district will recover the appropriate pro rata share of the site costs, carrying costs, and bond issuance costs from future participants. The district

may pay the fair market value based on an appraisal for such regional site and also may pay legal, engineering, surveying, or court fees and expenses incurred in acquiring such land. The commission shall, by separate order, order other districts participating in such regional facility to reimburse the acquiring district a proportionate share of such site costs, carrying costs, and bond issuance costs at such time as development occurs in such other districts requiring such regional site.

(h) Certification by registered professional engineer. Prior to the district purchasing or obligating district funds for the purchase of sites for water plants, wastewater plants, or lift or pump stations, the district must have a registered professional engineer certify that the site is suitable for the purposes for which it intended and identify what areas will need to be designated as buffer zones to satisfy all entities with jurisdictional authority.

(i) Joint recreational and drainage/detention sites without a constant level lake. If a drainage/detention site will also be used for recreational facility purposes, the costs are allocated 50% to drainage/detention and 50% to recreational purposes. If the recreational facility site includes an existing drainage/detention easement, then the area used to determine the reimbursement amount for the site excludes the area of the existing easement.

§293.59. Economic Feasibility of Project.

(a) In addition to determining the engineering feasibility of a project, the commission shall also determine the economic feasibility of each proposed bond issue, bond amendment, and extension of time application for a bond issue. The staff of the commission shall use the following sections in making economic feasibility analysis. In its written recommendations to the commission, which analyze the particular application, the staff shall always address the economic feasibility.

(b) Economic feasibility is the determination of whether the land values, existing improvements, and projected improvements in the district will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. Utility rates that do not exceed the rates of the largest city in the geographic area in which the district is located are conclusively deemed to be competitive. Economic feasibility is influenced by many factors and varies widely depending on economic conditions, the real estate market, the number of competing projects, and geographic location.

(c) Projected debt service tax rate is the tax rate required to meet the projected annual debt service requirement using projected assessed valuations and an appropriate tax collection rate. The projected annual debt service requirement shall include the previous and proposed debt. The projected debt service tax rate for any bond issue shall be shown in the cash flow table as a level or decreasing tax rate.

(d) No-growth debt service tax rate is the tax rate required to meet projected annual debt service requirements using the current assessed value and a 100% tax collection rate. The current value is determined by either:

(1) the most recent certificate of assessed valuation from the central appraisal district; or

(2) a certificate of estimated assessed valuation from the central appraisal district. Projected annual debt service requirements shall include the previous and proposed debt. The no-growth debt service tax rate for any bond issue shall be shown on the cash flow table as a level or decreasing tax rate.

(e) Combined no-growth tax rate is the sum of the following:

(1) no-growth debt service tax rate of the district;

(2) projected no-growth debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, or recreational facilities that are smaller in size than a county, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct. (In other words, for road districts or road utility districts that are as large as one county commissioner's precinct, the road district tax is not counted.);

(3) an equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city tax rate specifically attributable to water, sewage, drainage, and recreational facilities if the district is located within a city;

(5) current or proposed district or overlapping maintenance tax levy, if any;

(6) contract tax, if any; and

(7) less any equivalent tax rebate or other payments.

(f) Combined projected tax rate is the sum of the following:

(1) projected debt service tax rate of the district;

(2) projected debt service tax rate of all overlapping entities specifically attributable to water, wastewater, drainage, recreational facilities, and for roads if the entity is a road district or road utility district smaller in size than a county commissioner's precinct;

(3) an equivalent surcharge tax rate for water and wastewater surcharge, if any;

(4) city tax rate specifically attributable to water, sewage, drainage, and recreational facilities if the district is located within a city;

(5) current or proposed district or overlapping maintenance tax levy, if any;

(6) contract tax, if any; and

(7) less any equivalent tax rebate or other payment.

(g) A surcharge is a flat charge in addition to rates imposed on residents receiving water and/or wastewater service from resources of a city or other entity and supplied through district facilities. Surcharge revenues are placed in the district's debt service fund and are intended to be used to meet the debt service requirement on the district's bonds.

(h) For districts collecting surcharge revenues, the equivalent surcharge tax rate shall be calculated as follows.

(1) For residential development with similar house prices:
Figure: 30 TAC §293.59(h)(1) (No change.)

(2) For mixed-use development and diverse house prices:
Figure: 30 TAC §293.59(h)(2) (No change.)

(3) For purposes of this calculation, no adjustments shall be made for projected collection rate of the surcharge, interest earnings on the surcharge account, or other factors.

(i) For districts receiving a rebate for taxes paid to a city or other entity for water, wastewater, drainage, recreational, or road service, the equivalent tax rebate shall be calculated as follows:
Figure: 30 TAC §293.59(i) (No change.)

(j) The assessed value is the appraised value after considering exemptions and special valuations and is the amount to which the tax rate is applied to determine the total tax levy.

(k) For a district's first bond issue, the following paragraphs apply except that paragraphs (5), (6), (8), and (10) of this subsection

are only applicable to a district that has a developer as defined by Texas Water Code (TWC), §49.052(d).

(1) The district shall provide the current and projected tax rates of all entities levying or proposing to levy taxes on land within the district and a comparison of such taxes with the total tax levy on all competing projects in the same market area, as defined in the market study, if applicable, shall be provided.

(2) A cash flow analysis to determine the projected debt service revenue and projected tax rate shall be provided. It should include the following assumptions.

(A) Each ending debt service balance in the cash flow analysis will be not less than 25% of the following year's debt service requirement.

(B) Interest income will only be shown on the ending debt service balance for the first two years.

(C) A 90% tax collection rate shall be used in all the projected tax rate calculations and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(D) The projected tax rate shall be level or decreasing for the life of the bonds.

(3) The combined projected tax rate must not exceed the following:

(A) $1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) $1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(C) $1.00 in all other counties.

(4) The combined no-growth tax rate must not exceed the following:

(A) $2.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(B) $2.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(C) $2.00 for all other counties.

(5) The following apply to the central appraisal district certificate.

(A) If the valuations contained in the certificate of certified assessed valuation are at least 25% higher than those contained in the previous year's certified valuation, a written explanation from the district of such increase and a detailed calculation demonstrating how the value was derived shall be provided.

(B) In determining the projected or no-growth tax rates, a certificate of estimated assessed valuation may be used under the following conditions:

(i) the developer or landowner to receive bond proceeds shall certify, represent, and agree that it will not challenge and attempt to reduce its valuations below the values shown on the certificate for the life of the bonds;

(ii) if the valuation contained in the certificate of estimated taxable valuation is at least 25% higher than that contained in the most recent certified valuation, a written explanation from the district of such increase shall be provided;

(iii) if the estimated taxable valuation results in an exemption from §293.47 of this title (relating to Thirty Percent of District Construction Costs To Be Paid by Developer) and the final certificate of taxable value is not sufficient for an exemption from that section, the developer will be obligated to refund to the district the difference in the bond issue requirement without developer contribution and with developer contribution plus interest at the bond interest rate to the district; and

(iv) developed land values will not be used in the commission's analysis for lots that do not have completed water, wastewater, and drainage facilities and roads constructed to county or city standards, as applicable, at the time of development.

(6) At the time of commission approval, the following shall apply:

(A) all underground water, wastewater, and drainage facilities to be financed with proceeds from the proposed bond issue or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, shall be at least 95% complete as certified by the district's engineer;

(B) all groundwater, surface water, waste discharge permits, or other permits needed to secure capacity to support the projected build-out shall have been obtained;

(C) sufficient lift station, water plant, and sewage treatment plant capacity, as applicable depending on the type of district, to serve the connections projected for a period of not less than 18 months shall be either 95% complete as certified by the district's engineer or available in existing plants in accordance with executed contracts for capacity in plant(s) owned by other entities (but in no event less than 50,000 gallons per day water plant and sewage treatment plant capacity);

(D) water supply, lift station, and wastewater treatment capacity needed to support the projected build-out used to support the feasibility of the subject bond application must be existing or funds for that capacity must be included in the bond issue or secured by a letter of credit or other acceptable guarantees approved by the executive director; and

(E) all street and road construction to provide access to the areas provided with utilities to be financed with proceeds from the proposed bond issue, or necessary to serve the projected build-out used to support the feasibility of the subject bond issue, must be 95% complete as certified by the district's engineer. All streets and roads shall be constructed in accordance with city or county standards, as appropriate.

(7) At least 25% of the projected value of houses, buildings, and/or other improvements shown in the projected tax rate calculations must be completed prior to advertising for the bond issue. The projections used to satisfy this section shall also be used in the calculations required by paragraphs (2) and (3) of this subsection.

(8) For bonds supported by taxes, a written agreement must be executed between the district and the developer and any other landowner and their respective lenders receiving proceeds of the bonds that permanently waives the right to claim agricultural, open-space, timberland, or inventory valuation for any land, homes, or buildings that they own in the district with respect to taxation by the district. The agreement shall be binding for 30 years on such developer, other landowners, their respective lenders, any related or affiliated entities, and their successors and assignees, unless such exemptions were in effect at the time of the commission's approval of the bond issue and such exemptions were shown in the projected tax rate calculations. Such developer, landowners, and lenders shall record covenants

running with the land to such effect, which shall not be modified or released without written authorization of the commission, and shall provide recorded copies to the commission at the time of filing a bond application. If written agreements by owners of developable property who are not receiving bond proceeds are not voluntarily provided, and the ratio of the assessed valuation of their property to the district's total certified assessed valuation exceeds 10% for any individual or 20% for all combined, the feasibility analysis of the bond issue will be based on a reduced value for such property if not already on the tax rolls at a minimal value.

(9) One or more of the requirements in paragraphs (1) - (8) of this subsection may be waived for good cause by commission order if all of the facilities proposed under a bond issue application are essential because of valid orders, permits, or actions against the district by a governmental agency or court. If only a portion of the bond issue is for facilities essential because of valid orders, permits, or actions against the district by a governmental agency or court and if a waiver of any of the requirements is requested, all nonessential projects may be deleted from the bond issue if not feasible under the other provisions of these rules.

(10) A current market study is required for districts using growth projections to support the feasibility of the bond issue. The market study will meet the guidelines set out in the Bond Application Report Format. The market study provided will specifically address the projected building program for the three years subsequent to filing of the bond application and the period of projected build-out shown in the bond application and the competing projects in the surrounding market area. The study must contain a detailed description of the proposed development and the houses, buildings, and other improvements that are proposed.

(11) Requirements of paragraph (6)(A), (C), and (E) of this subsection, and the requirements of paragraph (7) of this subsection shall not apply in the following cases where:

(A) the no-growth tax rate for a district containing 2,000 acres or more providing only drainage facilities does not exceed $1.30; the no-growth tax rate of a district providing major water and sewage facilities that it finances by the issuance of its bonds to an area containing 2,000 acres or more does not exceed $1.30, and the combined no-growth tax rate does not exceed $2.00; and, the developer has completed a substantial amount of major thoroughfare or other infrastructure to serve the district;

(B) the district has an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in paragraph (5) of this subsection; or

(C) the district is providing water, wastewater, and drainage facilities and the combined no-growth tax rate of all overlapping entities specifically attributable to water, sewage, drainage, recreational facilities, and roads if the entity is a special district encompassing less than one county commissioner's precinct, if any, does not exceed the following:

(i) $1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;

(ii) $1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or

(iii) $1.00 in all other counties.

(D) for the exceptions in subparagraph (A) or (C) of this paragraph, the developer shall provide a guarantee for its 30% share of utilities, if required under §293.47 of this title, in the form and manner required by §293.47(g) of this title;

(E) for utilities that are not funded and not complete but necessary to support the feasibility of the bond issue, the developer shall provide a guarantee for 100% of utilities for the exceptions in subparagraphs (A), (B), or (C) of this paragraph in the form and manner required by §293.47(g) of this title;

(F) for the exceptions in subparagraph (B) or (C) of this paragraph, the developer shall provide a paving guarantee under §293.48 of this title (relating to Street and Utilities Construction by Developer); or

(G) for the exceptions in subparagraph (A) of this paragraph, financial guarantees for the internal subdivision utilities and streets are not required.

(l) For a district's second and subsequent bond issues, subsection (k) of this section shall apply, and the following shall apply except that only paragraph (1) of this subsection applies to districts that do not have a developer as defined by TWC, §49.052(d), or to districts that meet the criteria set out in subsection (k)(11) of this section.

(1) A 90% tax collection rate shall be used in the projected tax rate calculations unless the district demonstrates that its historical collection rate is higher, and a 100% tax collection rate shall be used in the no-growth tax rate calculations.

(2) The water, wastewater, and drainage facilities financed by the district under previous bond issues and all road and street construction to serve such connections shall be at least 95% complete as certified by the district's engineer.

(3) Sufficient lift station, water plant, and sewage treatment plant capacity to serve the connections shown in the tax rate calculations submitted in prior bond issues shall be at least 95% complete as certified by the district's engineer, unless the district is a participant in a regional surface water or wastewater plant, a permit sufficient for the expansion has been issued, and either:

(A) funds are available to finance such capacity and any additional capacity necessary for a feasible expansion;

(B) sufficient capacity is contractually available to serve all such prior connections; or

(C) the plant is under construction with sufficient capacity to serve all such prior connections.

(4) Houses and/or buildings equal to 75% of the projected buildout used in the projected tax rate calculations contained in all prior bond issues shall be completed and may be located on either:

(A) the area developed from the proceeds of the prior bond issues; or

(B) a combination of the area developed from the proceeds of prior bond issues, the proposed bond issue, and future bond issues.

(5) The requirements of subsection (k)(10) of this section shall apply, unless the district requests and the commission, in its discretion waives such requirement for one of the following reasons:

(A) disregarding those areas that had growth projected and were financed in previous bond issues, at least 50% of the value of the houses and/or buildings shown in the build-out schedule and used in the projected tax rate calculations supporting the subject bond issue must be existing;

(B) the district anticipates receiving an acceptable credit rating as defined in §293.47(b)(4) of this title or a credit enhanced rating as defined in §293.47(b)(5) of this title, and such rating must be obtained prior to the sale of bonds; or

(C) the district has a ratio of debt to assessed valuation as provided in §293.47(a)(1) of this title.

(m) Bond issues supported only by revenue from a defined area must be analyzed to assure that the defined area meets the requirements of this section independently of the remainder of the issuing district.

(n) A district may request a variance if it does not meet the guidelines contained in subsections (k) and (l) of this section, and a majority of the district's board of directors finds by resolution that the district would be justified in requesting a variance. The district will be responsible for providing sufficient documentation to justify any request for a variance. The commission will only grant variances in exceptional cases and may deny any request for a variance. The commission shall not grant a variance to the maximum combined projected tax rate or the maximum combined no-growth tax rate specified in subsection (k) of this section for districts that have a developer and the district is financing 100% of construction costs under the criteria set out in §293.47(a) of this title, which would otherwise require 30% developer participation. In determining whether to grant a variance, the following factors shall be considered:

(1) the degree of variation from the guidelines;

(2) the past history of the district with respect to its projections versus actual build-out and compliance with commission rules;

(3) the past history of the developer and related or affiliated entities with respect to its projections versus actual build-out and its compliance with commission rules and agreements with the district and other districts in which it developed land;

(4) other factors peculiar to the district, such as the area in which situated, economic factors, the adjoining competitive developments, and their status;

(5) the financial resources of the developer and its lender and any special commitments, obligations, or expenditures for the project;

(6) past history of the market area in which the project is located; and

(7) other factors that may affect the feasibility of the project.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
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For further information, please call: (512) 239-5017

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SUBCHAPTER G. OTHER ACTIONS REQUIRING COMMISSION CONSIDERATION FOR APPROVAL

30 TAC §293.80, §293.83

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendments implement TWC, Chapter 49, relating to Provisions Applicable to All Districts, and Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. UTILITY SYSTEM RULES AND REGULATIONS

30 TAC §293.113

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendment implements TWC, Chapter 49, relating to Provisions Applicable to All Districts, as amended by HB 1541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. ACQUISITION OF ROAD UTILITY DISTRICT POWERS BY MUNICIPAL UTILITY DISTRICT

30 TAC §293.201, §293.202

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state; and TWC, §12.081, which provides the commission's authority to issue rules necessary to supervise districts and authorities created under Article III, §52, and Article XVI, §59, of the Texas Constitution.

The adopted amendments implement TWC, Chapter 54, relating to Municipal Utility Districts, as amended by HB 1541.

§293.202. Application Requirements for Commission Approval.

A conservation and reclamation district, operating under Texas Water Code (TWC), Chapter 54, and which has the power to levy taxes, may submit to the executive director of the commission an application for road utility district powers, which shall include the following documents:

(1) a petition or written request that will include a detailed narrative statement of the reasons for requesting road utility district powers and the reasons why such powers will be of benefit to the district and to the land that is included in the district, signed by the president of the board of directors of the district;

(2) a certified copy of the resolution of the governing board of the district authorizing the district to petition the commission for road utility district powers;

(3) a certification that the district is operating under TWC, Chapter 54, and has the power to levy taxes, with proper statutory references;

(4) evidence that the petition or written request to the commission requesting road utility district powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction that any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;

(6) for districts that have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date that the district submits its request for approval with the executive director;

(7) a certified copy of preliminary plans for all the facilities to be constructed, acquired, or improved by the district, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013;

(8) a cost analysis and detailed cost estimate of the proposed facilities to be constructed, acquired, or improved by the district under road utility district powers with a statement of the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;

(9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;

(10) any other information that may be required by the executive director; and

(11) a filing fee in the amount of $100 plus the cost of the required notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 301. LEVEE IMPROVEMENT DISTRICTS, DISTRICT PLANS OF RECLAMATION, AND LEVEES AND OTHER IMPROVEMENTS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§301.1 - 301.4, 301.6, 301.21, 301.31, 301.38, 301.43, 301.45, 301.51, 301.71, 301.73, and 301.74; and the repeal of §§301.5, 301.22, and 301.23 *without changes* to the proposed text as published in the October 29, 2004, issue of the *Texas Register* (29 TexReg 10089), and the text will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULEMAKING

The commission has the statutory duty and responsibility to create, supervise, and dissolve certain water and water-related districts and to approve the issuance and sale of bonds for district improvements in accordance with numerous chapters of the Texas Water Code (TWC). The commission oversees approximately 1,100 active water districts in Texas. Chapter 301 of the commission's rules governs the creation of levee improvement districts and the planning and review of levees and drainage projects for such districts.

A corresponding rulemaking published in this issue of the *Texas Register* includes changes to 30 TAC Chapter 293, Water Districts.

The adopted rulemaking revises existing requirements relating to levee improvement districts, levees and other improvements, and the commission's supervision of such districts under TWC, Chapters 5, 16, and 57, as amended by House Bill (HB) 1541, 78th Legislature, 2003. HB 1541 amends various sections of TWC, Chapter 57, to delete references to "plans of reclamation," to delete the requirement to obtain commission approval of such plans, and to add the requirement that an engineer's report be prepared in lieu of a plan of reclamation.

Specifically, the adopted rules delete all references to plans of reclamation, including deleting references to application requirements and having to obtain commission approval.

The adopted rules also correct a rule reference regarding fees and delete references to a previous name of the agency.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council*

Drafting Manual, October 2002. These changes also update references to reflect the agency's name change.

Adopted amendments to §§301.1, 301.2, 301.4, 301.31, 301.38, 301.43, 301.45, 301.51, 301.73, and 301.74 exclude references to plans of reclamation, in accordance with HB 1541, §§34 - 55, which amend various sections of TWC, Chapter 57; and HB 1541, §57, which repeals various sections of TWC, Chapter 57.

Sections 301.5, 301.22, and 301.23 are adopted to be repealed to exclude references to plans of reclamation, in accordance with HB 1541, §§34 - 55, which amend various sections of TWC, Chapter 57; and HB 1541, §57, which repeals various sections of TWC, Chapter 57.

Adopted amendments to §301.71 correct the reference for fees from TWC, §5.235 to §5.701.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rules is to primarily establish new or revise existing requirements relating to the administration of certain water districts and the commission's supervision over their actions under TWC, Chapters 5, 16, and 57, as amended by HB 1541. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the adopted rules do not exceed a federal standard because no applicable federal standards exist. The adopted rules do not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. The adopted rules were not developed solely under the general powers of the agency; but were specifically developed to implement TWC, §§57.015, 57.092, 57.104, 57.108, 57.116 - 57.118, 57.177, 57.216, 57.260, 57.261, 57.265 - 57.267, 57.269, 57.270, and 57.273 - 57.275 as amended by HB 1541 and the adopted rules do not exceed the express requirements of those state statutes. The commission invited, but received, no public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed a preliminary assessment of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of this rulemaking is to establish new or revise existing requirements relating to the administration of certain water districts and the commission's supervision over the districts' actions under TWC, Chapters 5, 16, and 57, as amended by HB 1541. Promulgation and enforcement of this rulemaking will constitute neither a statutory nor a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the adopted rulemaking neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the adopted rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The CMP policy applicable to the adopted rules states that the commission's rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, under TWC, §16.263, must comply with the policies in 31 TAC §501.14(s).

The purpose of the adopted rules is to implement HB 1541. Specifically, the adopted rules delete all the requirements and references related to "plans of reclamation." Additionally, this rulemaking will update the name of the agency. HB 1541 amends TWC, Chapter 57, by deleting all references to plans of reclamation and replacing plans of reclamation with an engineer's report. Deleting the requirements related to plans of reclamation in the commission's rules should not have an adverse effect on coastal areas because the plans for construction projects will still be reviewed by counties. When the legislature originally passed TWC, Chapter 57, many counties did not have the staff to review projects that were part of a plan of reclamation, so the commission conducted the reviews. Most counties now have staff available to review construction plans and engineering reports, which have replaced the plans of reclamation. Additionally, counties are responsible for flood-related issues under the Federal Emergency Management Agency and, therefore, already review projects that are included in an engineer's report.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with the CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the rules do not alter the allowable location, standards, or stringency of requirements for infrastructure on coastal barriers. The commission invited, but received, no comments on the consistency of this rulemaking with the CMP.

PUBLIC COMMENT

A public hearing was held November 18, 2004. The comment period closed on November 29, 2004, and was extended to December 15, 2004. No oral or written comments were received related to Chapter 301.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§301.1 - 301.4, 301.6

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted amendments implement TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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30 TAC §301.5

STATUTORY AUTHORITY

The repeal is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted repeal implements TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LEVEE IMPROVEMENT DISTRICTS AND FORMATION OF DISTRICT

30 TAC §301.21

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted amendment implements TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LEVEE IMPROVEMENT DISTRICTS AND APPROVAL OF DISTRICT PLANS OF RECLAMATION

30 TAC §301.22, §301.23

STATUTORY AUTHORITY

The repeal is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted repeal implements TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. APPROVAL OF LEVEES AND OTHER IMPROVEMENTS

30 TAC §§301.31, 301.38, 301.43, 301.45

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted amendments implement TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. NOTICE AND HEARING

30 TAC §301.51

STATUTORY AUTHORITY

The amendment is adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted amendment implements TWC, §5.103, relating to Rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FEES

30 TAC §§301.71, 301.73, 301.74

STATUTORY AUTHORITY

The amendments are adopted under the authority of TWC, §5.103, which provides the commission's authority to adopt any rules necessary to carry out its powers and duties under the laws of the state.

The adopted amendments implement TWC, §5.103, relating to Rules.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 61. DESIGN AND CONSTRUCTION

SUBCHAPTER E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS, RECREATION, AND OPEN SPACE FUND PROGRAM

31 TAC §§61.132 - 61.137

The Texas Parks and Wildlife Commission adopts amendments to §§61.132 - 61.137, concerning the Texas Recreation and Parks Account Grants Program, without changes to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11918).

The proposed amendments are a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule as necessary and appropriate. As a result of the review process, which included surveys, focus groups, and public hearings, the department determined that modifications should be made to improve the effectiveness of programs, simplify and improve the scoring systems, and address new constituent needs.

In general, the amendments modify the scoring systems for outdoor, indoor, and small community grants by simplifying the criteria for awarding points for master plan priorities, restructuring the criteria for awarding priority points for land acquisition, increasing the potential point total for renovations, and simplifying the evaluation process for outside matching fund criteria. The changes reflect statewide recreation trends that indicate an increased preference for the rehabilitation of existing facilities and create extended flexibility in providing required matching funds. The amendments eliminate obsolete department program references and add a criterion to reduce the competitive weight given to new applicants with balances remaining on previously funded projects. Regional grant scoring criteria have been reorganized to better reflect department priorities and sponsor needs in developing inter-governmental relationships and protecting a diversity of natural resources. Administrative changes will allow larger metropolitan areas to simultaneously submit and receive funding for more than one grant at a time in order to return funding to those communities with larger sales tax contributions to the Texas Recreation and Parks Account.

The amendments are also necessary to implement administrative and scoring system changes for existing grant programs under the Texas Recreation and Parks Account, and therefore require changes to the Texas Recreation and Parks Account Grant Manual (which is adopted by reference) and adoption of the revised scoring criteria used to evaluate candidate projects for possible funding under the Texas Recreation and Parks Account Program.

The amendments are necessary, in the aggregate, to establish the purpose, priorities, standards, and scoring systems for grant applications submitted by communities.

The amendment to §61.132, concerning the Texas Recreation and Parks Account Grants Manual, is necessary for the ease and convenience of potential customers and will function by updating phone and e-mail contact information for the program.

The amendment to §61.133, concerning Grants for Outdoor Recreation Projects replaces the word 'increase' with the word 'provide' in order to clarify the intent of the criterion, to avoid the implication of inappropriate development or quantitative standards, and to emphasize environmentally sensitive opportunities where appropriate. The changes are necessary to ensure that terminology is accurate. The amendment also introduces 'innovative use' as a priority criterion, which is necessary to acknowledge that innovation also plays a role in developing outdoor recreation opportunity. The amendment modifies terminology by using the term 'sponsors' to replace 'park and recreation providers' and 'governmental and/or educational' entities. The change is necessary to create one subsection to address matching fund criteria, rather than addressing it piecemeal. The amendment also combines provisions regarding sources of matching funds for the same reason. The amendment also replaces the phrase 'wise use of natural resources' with the phrase 'environmentally responsible activities and development,' which is nonsubstantive but necessary to more clearly articulate the department's goals in administering the program. The amendment increases the timeframe for plan accomplishment from five years to ten; specifies required information for plan updates; and requires sponsors who submitted plans prior to 2000 to submit new plans (but allows a five-year extension for plans submitted since 2000), all of which are necessary to allow local sponsors to more effectively plan for and fund recreational development. The amendment also allows separate priority lists to be submitted for indoor and outdoor priorities; requires a discussion and map to accompany plans for open space acquisitions; provides for renovation and redevelopment needs to be prioritized; and requires plan revisions involving more than progress updates to be reformulated to include all new priorities, which is necessary to, respectively: allow local sponsors to receive separate priority points for master planning for outdoor and indoor applications; justify the need for open space and renovation proposals that might receive priority points elsewhere in the scoring criteria; and to ensure public input when master plan priorities are revised. The amendment also reduces the maximum number of priority points from 20 to 15; reorganizes the priority need structure to eliminate 'point ranges' in favor of a 1:1 correspondence between criterion and points awarded; and reduces the possible point values for each priority need to accommodate the changes to the overall point total and individual priority values. The changes are necessary to simplify the method for awarding master planning priority points while still acknowledging the importance of meeting locally determined priority planning needs in the project proposal. The amendment allows low-impact facilities to be evaluated as a group, rather than individually, if desired. The change is necessary to assure that priority points are awarded for significant recreation facilities. The amendment relocates the criteria for evaluating water-based recreation acquisition opportunities; eliminates 'complementary' opportunities for water-based opportunities; clarifies that only existing water bodies qualify for consideration; clarifies the definitions of 'river' and 'pond'; and reduces the point potential for wetland development projects. This portion of the amendment is necessary in order to relocate provisions governing the award of priority points for water acquisition to a single section; to eliminate confusing wording regarding eligible development; to prevent environmentally unsuitable pond development; to provide definitions for certain water-body types; and to eliminate potential duplication of priority point awards for wetlands that receive significant points under other criteria. The amendment also provides for proposals to be evaluated on innovative use of recreation lands and facilities; reduces the potential point total for categorical project criteria; clarifies the term "recreation opportunity," and eliminates the minimum percentage requirement for applicability of the criterion. The changes are necessary to alleviate concerns about the perceived need for local sponsors to budget for low-priority new facilities in addition to higher-priority facility development. The amendment also clarifies that trees and drip-irrigation systems are considered recreational rather than support improvements, which is necessary to properly award priority points for environmentally appropriate use of landscaping. The amendment also allows for individual applicability of special population criteria and revises the definition for "low income," which is necessary to clarify that special population categories may be cumulative or apply individually, and to standardize the definition of "low income" using a readily accessible source that is updated annually. The amendment also requires documentation of outside matching fund contributions; consolidates governmental, educational, and private sector sources (including land dedication) of matching funds under a single criterion; clarifies that publicly owned non-parkland is eligible as match; and reduces the maximum available points from 25 to 20 by eliminating the separate criterion for the permanent dedication of non-sponsor-owned public non-parkland only. The changes are necessary to simplify the awarding of priority points for outside matching fund sources and to provide auditable evidence of outside contributions. The amendment also allows priority points to be awarded for publicly owned non-parkland used as acquisition match when such acquisition meets the resource definitions under this criterion; increases the required open space acreage from 1 acre to 2 acres; eliminates use of the National Wetlands Priority Conservation Plan for evaluation of wetland sites; allows habitat enhancement to qualify for open space designation; reduces the priority points awarded for each resource under the criterion; and removes the population-density requirement for proposals that seek only the acquisition of land. The changes are necessary to clarify that dedication of publicly owned non-parkland is an eligible method of increasing a local community's recreational estate; to group all resource acquisitions into a single criterion for ease of evaluation; to recognize functional habitat limits and development potential for open space sites; to allow flexibility of biological evaluation criteria for wetland determination; to acknowledge local sponsor requests to reduce scoring weight for land acquisition in relation to other local priority needs without compromising the department's preference for the acquisition and preservation of significant natural resources; and to provide flexibility for smaller or less densely developed communities to acquire land. The amendment also expands the definition of renovation to include "adaptive reuse" and increases the potential number of priority points awarded for this criterion. The changes are necessary to properly address the fiscal and environmental potential of the use of existing structures for new purposes, and to meet the demonstrated local need for renovated facilities as opposed to land acquisition and development of new facilities. The amendment also replaces the phrase 'the conservation of natural resources' with the phrase 'environmentally responsible activities and development'; deletes the phrase 'renovation of obsolete lighting systems with more'; and adds the elements

'alternative energy sources' and 'water catchment systems' to the list of eligible conservation items. The changes are necessary to standardize the program nomenclature, which is used in several grant programs. The amendment also substitutes the word 'significant' for the word 'greenbelt'; reduces the number of priority points from five to three; and removes the hierarchy of destinations. These changes are necessary to reward a greater variety of linkages whose significance may vary from community to community while acknowledging the documented reduction in local priority for providing greenbelt linkages. The amendment also adds the term 'site-based' in regard to cultural resources and adds the phrase 'through interpretive facilities or preservation strategies'. These changes are necessary to restrict award of priority points to only those resources specifically related to the site for development and to clarify the methodology for evaluation.

The amendment to §61.134, concerning Grants for Indoor Recreation Projects, consists of several actions. The amendment incorporates limitations on eligibility of local projects for consideration by the Texas Parks and Wildlife Commission, and revises the introductory listing of recommended priorities to track the revisions made elsewhere in the scoring system by this rulemaking. The change is necessary to standardize review procedures among the Texas Recreation and Parks Account grant programs. The amendment increases the timeframe for plan accomplishment from five years to ten; requires plans older than two years to be updated; and requires sponsors who submitted plans prior to 2000 to submit new plans (but grants a five-year extension for plans submitted since 2000). The amendment is necessary to allow local sponsors to more effectively plan for and fund recreational development and to establish consistency between grant programs. The amendment also allows for separate priority lists to be submitted for indoor and outdoor needs; requires a map (accompanied by a discussion) to accompany plans for open space acquisitions; provides for renovation and redevelopment needs to be prioritized; and requires plan revisions involving more than progress updates of existing updates to be reformulated to include all new priorities. The amendment is necessary to allow local sponsors to be awarded priority points for separate master planning for outdoor and indoor applications; to justify the need for open space and renovation proposals which might be eligible for priority points under other criteria; and to ensure public input when master plan priorities are revised. The amendment also reduces the maximum number of priority points from 20 to 15; reorganizes the priority need structure to eliminate 'point ranges' in favor of a 1:1 correspondence between criteria and points awarded; and reduces the possible point values for each priority need to accommodate the changes to the overall point total and individual priority values. The changes are necessary to simplify the method for awarding master planning priority points while still rewarding the importance of meeting locally determined priority planning needs in the project proposal. The amendment reduces the number of potential priority points available for recreational diversity. The change is necessary to standardize the method of allocating diversity points and to provide consistency with the outdoor grant scoring system. The amendment eliminates the award of priority points for outdoor education or conservation facilities. The change is necessary to eliminate duplication, since priority points are awarded for such facilities under other criteria. The amendment also adds "innovative use" as a priority criterion and allows the award of points on a per-opportunity basis rather than as a percentage of construction cost. The changes are necessary to acknowledge that innovation also plays a role in developing indoor recreation opportunities, and to correct a methodology error. The amendment eliminates requirements regarding the number of citizens served by a project. The change is necessary because most communities propose to serve the entire population or service area and the inclusion of priority points no longer makes a substantive addition to the project rankings. The amendment removes the category of youth-at-risk as a stand-alone criterion. The change is necessary in order to consolidate all special-population review criteria in one place. The amendment also replaces the term "governmental or educational institutions" with the term "public or private entities;" increases the number of priority points awarded from 15 to 20; includes publicly owned non-parkland from sources other than the sponsor as a source of matching funds; allows for non-grant assisted facility contributions to be eligible for priority points; and prohibits credit for permanent dedication of land from a source other than the sponsor. The changes are necessary to simplify and standardize the eligibility of outside matching sources by incorporating public and private sources into a single criterion; to clarify that the use of publicly owned non-parkland is eligible as match; to standardize the priority points awarded under the equivalent criterion for outdoor grants; and to remove conflicting wording resulting from the combination of outside matching fund sources. The amendment also consolidates provisions governing public and private matching fund sources in a single criterion, for the same reasons discussed in the portion of this preamble relating to the adoption of §61.133. The amendment also modifies the criteria by adding "adaptive reuse" as a method to increase the priority points awarded under the section. The change is necessary to address the fiscal and environmental potential in the use of existing structures for new purposes and to meet the demonstrated local need for renovated facilities as opposed to land acquisition and development of new facilities. The amendment also includes youth-at-risk citizens in the special-population criteria; revises the definition of "low income;" and increases the number of potential priority points available for the criterion. The changes are necessary to standardize the special-populations criteria and the method of dispensation of priority points among grant programs, and to standardize the definition of "low income" by using a readily accessible source that is updated annually. The amendment replaces the phrase 'conservation of natural resources and environmental values' with the phrase 'environmentally responsible activities and development'; eliminates the phrase 'renovation of obsolete lighting systems with more'; and adds activities for alternative energy sources and water catchment systems. The changes are nonsubstantive and are necessary to more clearly articulate the department's goals in administering the program and to standardize the nomenclature used in the different grant programs.

The amendment to §61.135, concerning Grants for Community Outdoor Outreach Projects, consists of several actions. The amendment revises the introductory listing of recommended priorities to track the revisions to the scoring system, which is necessary to standardize review procedures among the Texas Recreation and Parks Account grant programs. The amendment also implements standardized review procedures, which is necessary to make the administration of all grant program project priority scoring systems consistent. The amendment also provides for a new priority point total for the criterion, which is necessary because the previous total was incorrect. The amendment also allows for points to be awarded on the basis of populations at given sponsor locations (inner-city or

rural or neither, but not both). The change is necessary to clarify the existing method of determining population priority points. The amendment also revises the definition of a 'rural county.' The change is necessary to be consistent with other Texas Recreation and Parks Account grant program specifications regarding rural and/or small community populations. The amendment also implements language to clarify that the target population with respect to minorities includes only those populations that are ethnic minorities, which is necessary to prevent confusion. The amendment also implements the federal standard for determination of low-income status. The change is necessary to standardize the definition of "low income" by using a readily accessible source that is updated annually. The amendment also requires that agreements between local sponsors and other partnerships be kept current. The change is necessary to ensure that the most up-to-date version of an agreement is available for audit purposes. The amendment also requires written proof of sponsor contributions, which is necessary to provide auditable records of contributions for which priority points may be awarded. The amendment also requires the identification of specific department facilities in proposals that would involve the use of department facilities, which is necessary for the department to provide the program with a way to maintain records of facility use by program participants and to allow accurate proposal review. The amendment also requires the applicant to obtain a verification letter from department staff involved with a project, which is necessary to ensure proper coordination between local sponsors and department staff. The amendment also eliminates the award of points for use of TPWD instructional materials. The change is necessary because the use of instructional materials alone is insignificant in the overall scope of a project and should not qualify for priority points. The amendment also eliminates the award of priority points for participation in the TPW Outdoor Kids Program. The change is necessary because the program no longer exists. The amendment also provides a formula for determining the point value reductions for applicants that have not fulfilled all previous community outdoor outreach grant reimbursement requirements. The change is necessary to ensure that sponsors are in compliance with guidelines in order to be eligible for additional funding, and to create a definitive formula for making such determinations.

The amendment to §61.136, concerning Small Community Grants Programs, consists of several actions. The amendment revises the introductory listing of recommended priorities to track the revisions in the scoring system made by this rulemaking. The change is necessary to standardize review procedures among the Texas Recreation and Parks Account grant programs. The amendment reduces the potential number of priority points awarded for recreational diversity, which is necessary to acknowledge local communities' requests for a reduced emphasis on the number of facilities in a proposal as opposed to other considerations. The amendment also allows for consideration of 'innovative use,' which is necessary to acknowledge that innovation also plays a role in developing small community recreation opportunities. The amendment also replaces the term 'recreation opportunity' with 'public park,' which is necessary to more accurately describe the type of recreational facility eligible to receive points as a park setting, as well as to distinguish this criterion from others that involve new and different recreational opportunities. The amendment also eliminates the award of points for projects that would be either the first public park or, if not the first park, would introduce new and different facilities to a community. The change is necessary to distinguish the opportunity for providing new and different facilities from the opportunity for providing the first public park, and to establish consistency between grant programs with the same criteria. The amendment also clarifies that special-population categories may be cumulative or apply individually, which is necessary to offer flexibility. The amendment also provides that the federal poverty definition midpoint in the USDA National School Lunch Program Income Eligibility Guidelines is the standard for defining low-income status. The changes are necessary to standardize the definition of "low income" by using a readily accessible source that is updated annually and to eliminate unnecessary verbiage. The amendment also requires documentation of fund sources and broadens the eligibility standards to encompass all public entities. The changes are necessary to require auditable proof of contributions and to consolidate all sources of matching funds. The amendment also standardizes the terminology to create a single set of terms that mean the same things in different grant programs. The amendment also clarifies that publicly owned non-parkland is eligible for matching funds and reduces the potential number of priority points for that criterion from five to ten. The change is necessary to acknowledge local sponsor requests to place more scoring emphasis on the need for renovation of existing facilities as opposed to acquisition or development of new areas and facilities. The amendment also replaces the phrase 'conservation of natural resources' with the phrase 'environmentally responsible activities,' which is necessary to standardize the nomenclature used in the different grant programs.

The amendment to §61.137, concerning Grants for Regional Parks Grant Programs, consists of several actions. The amendment revises the introductory listing of recommended priorities to track the revisions made to the rules governing the scoring system, which is necessary to standardize review procedures among the Texas Recreation and Parks Account grant programs. The amendment creates a range of priority points instead of a fixed number per criterion, which is necessary to allow for flexibility in evaluating the quality and number of intensive-use recreation opportunities. The amendment similarly allows for flexibility in evaluating the quality and function of linear greenways and conservation areas. The amendment also relocates all provisions applicable to acquisition of water access in a single section, which is necessary to consolidate all natural resource acquisition functions under a single criterion and to allow for flexibility in evaluating the type and quality of water bodies. The amendment also allows for the evaluation of proposed acquisition of access to natural resources other than water. The change is necessary to incorporate all natural resource acquisition functions into a single criterion and to promote equity among regions of the state with few opportunities to provide water access but with other valuable natural resources of recreational value, as well as to allow for flexibility in evaluating the type and quality of the natural resource. Similarly, the amendment relocates the criteria relating to development of significant natural resource-based recreation opportunities, including water-based recreation, natural resource-based recreation other than water, and conservation of aquatic habitat, into a single section. The change is necessary to consolidate similar requirements for greater ease of use and to allow for greater flexibility in evaluating the type and quality of the resources. The amendment also requires the dedication of publicly owned non-parkland included as match, replaces the phrase 'multiple political jurisdictions' with the phrase 'sources other than the sponsor;' increases the potential priority points for these criteria from 5 to 15; and clarifies that 'contribution value' means the

value of contributions from outside sources. The changes are necessary to clarify that the use of publicly owned non-parkland is eligible as match, and to simplify and standardize the awarding of points for all sources of outside matching funds rather than sponsor resources alone. The amendment also requires documentation of suggested master plans; adds conservation projects to the list of eligible types of master plans; and adds public service organizations to the list of eligible master-plan providers. The changes are necessary to provide an auditable record of master plans, which can be used to provide the source of priority points to be awarded for this criterion; to appropriately define the types of master plans eligible for points; and to further define the types of organizations whose plans are eligible for consideration. The amendment also allows private sector contributions to be combined with other sources of matching funds for the purpose of simplifying evaluation of outside matching sources and to standardize matching fund criteria among grant programs. The amendment also removes the requirement that publicly owned non-parkland be dedicated from a source other than the sponsor. The change is necessary to designate dedication of publicly owned non-parkland as an eligible matching fund source, and to allow sponsor-owned as well as non-sponsor-owned non-parkland as match. The amendment also reduces the number of priority points per linkage from five to two and alters terminology to reflect the more significant recreational impact of the destination on either end of a linkage as opposed to the political jurisdiction in which such a linkage terminates. The amendment also adds a criterion for 'sustainable development' regarding resource conservation eligibility, which is necessary to standardize wording of the same criterion appearing in different grant programs.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501497
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: May 1, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 389-4775

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §1.1309(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____ SELLER/CREDITOR _____

ADDRESS _____ ADDRESS _____

CITY _____ STATE____ZIP_____ CITY _____ STATE____ZIP_____

PHONE _____ PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	$	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: **[True daily earnings:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. **[Scheduled Installment Earnings Method or sum of the periodic balances:]** (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. **[Sum of the periodic balances method:]** I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		$_____(1)
2.	Downpayment =		
	[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]		
	Gross trade-in	$_____	
	- payoff by seller	$_____	
	= net trade-in	$_____	
	[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]		
	+ cash	$_____	
	+ Mfrs. Rebate	$_____	
	+ other (describe) _____	$_____	
	Total downpayment		$_____(2)
3.	Unpaid balance of cash price (1 minus 2)		$_____(3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):		
	A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____	$_____	
	B. Cost of physical damage insurance paid to insurance company	$_____	
	C. Cost of optional coverages with physical damage insurance paid to insurance company	$_____	
	D. Cost of optional credit insurance paid to insurance company or companies Life Disability	$_____	
	E. Other insurance paid to the insurance company	$_____	
	F. Official fees paid to government agencies	$_____	
	G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)]	$_____	
	H. Sales tax [*Optional addition*: (if not included in cash price)]	$_____	
	I. Other taxes [*Optional addition*: (if not included in cash price)]	$_____	
	J. Government license and/or registration fees	$_____	
	K. Government certificate of title fee	$_____	
	L. Government vehicle inspection fees	$_____	
	M. Deputy service fee paid to dealer	$_____	
	N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law.** [***Option to insert Spanish translation of disclosure here.***]	$_____	
	O. Other charges (Seller must identify who is paid and describe purpose)		
	to_____for_____	$_____	
	to_____for_____	$_____	
	to_____for_____	$_____	
	Total other charges and amounts paid to others on my behalf		$_____(4)
5.	**Amount Financed** (3 + 4)		$_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure 1: 7 TAC 1.1308(12).]***

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer $_____ ☐Credit Life, both buyers $_____ Term _____
☐Credit Disability, one buyer $_____ ☐Credit Disability, both buyers $_____ Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. ***[Optional additional language for true daily earnings method contracts:]*** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.
If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.
(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.
(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular Transaction using sum of the periodic balances method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00.

[True Daily Earnings Method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[Scheduled Installment Earnings Method:] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the

late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and Scheduled Installment Earnings Method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. [Sum of the periodic balances method:] You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) [Scheduled Installment Earnings Method:] You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is $1/365^{th}$ of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00.) [Flexible contract forms designed to accommodate alternative methods:] You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term

greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [**True daily earnings method:**] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. to anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [**True daily earnings method:**] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [**True daily earnings method:**] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [**Scheduled installment earnings method or sum of the periodic balances:**] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25.00 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:
Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 7 TAC §81.2(a)(5)

Form A

Conditional Qualification Letter

Date:

Prospective Applicant:

Mortgage Banker

Registration Number _____

Address _____

Phone # _____

Loan (describe as follows):

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage Banker __ has __ has not received a signed application for the Loan from the Prospective Applicant

Mortgage Banker __ has __ has not reviewed the Prospective Applicant's credit report

Mortgage Banker __ has __ has not reviewed the Prospective Applicant's credit score

Mortgage Banker has reviewed the following additional items (list):

The Prospective Applicant has provided the Mortgage Banker ___verbally ___in writing with the following information about the Prospective Applicant:

Income	_____Yes	____No	____Not Applicable
Available cash for down payment and payment of closing costs	_____Yes	____No	____Not Applicable
Debts	_____Yes	____No	____Not Applicable
Other Assets	_____Yes	____No	____Not Applicable

Based on the information that the Prospective Applicant has provided to the Mortgage Banker, as described above, the Mortgage Banker has determined that the Prospective Applicant is eligible and qualified to meet the financial requirements of the Loan.

This is not an approval for the Loan. Approval of the Loan requires: (1) the Mortgage Banker to verify the information that the Prospective Applicant has provided; (2) the Prospective Applicant's financial status and credit report to remain substantially the same until the Loan closes; (3) the collateral for the Loan (the subject property) to satisfy the lender's requirements (for example, appraisal, title, survey, condition, and insurance); (4) the Loan type and terms, as described, to remain available in the market; (5) the Prospective Applicant to execute loan documents the lender requires, and (6) the following additional items (list):

_____

Mortgage Banker or Loan Officer

Figure: 7 TAC §81.2(b)(6)

Form B
Conditional Approval Letter

Date:

Applicant:

Mortgage Banker:

Registration Number _____

Address _____

Phone # _____

Loan (describe as follows):

1. Loan Amount:
2. Interest Rate:
3. Interest Rate Lock Expires (if applicable):
4. Maximum Loan-to-Value Ratio:
5. Loan Type and Program:

Secondary financing terms (if applicable):

Optional Information:
Points:
Origination:
Discount:
Commitment:
Other (describe):

Subject Property:

Mortgage Banker has received a signed application from the Applicant.

Mortgage Banker has:

Reviewed applicant credit report and credit score	_____Yes	____Not Applicable
Verified applicant's income	_____Yes	____Not Applicable

Verified applicant's available cash for down payment and closing costs	_____Yes	____Not Applicable
Reviewed applicant's debts and other assets	_____Yes	____Not Applicable

Applicant is approved for the Loan provided that the Applicant's creditworthiness and financial position do not materially change prior to closing and provided that the following additional conditions are fully satisfied:

1. The Subject Property is appraised for an amount not less than $_____:
2. The Mortgage Banker does not object to encumbrances to title shown in the title commitment or survey;
3. The Subject Property's condition meets Mortgage Banker's requirements;
4. The Subject Property is insured in accordance with the Mortgage Banker's requirements;
5. The Applicant executes the loan documents the Mortgage Banker requires and abides by closing instructions; and
6. The following additional conditions are complied with (list):

This Conditional Approval expires on _____.

_____
Mortgage Banker

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposal

Notice is hereby given of Requests for Proposals by the Texas State Affordable Housing Corporation (the "Corporation") to provide managing underwriter senior services for the 2005 Professional Educators Home Loan Program's $25,000,000 Mortgage Revenue Bond Program. Proposals will be due by 5:00 P.M. (CDT) on Friday, May 6, 2005. Please deliver three (3) copies to Cathy Dean, Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin Texas 78701. Please deliver two (2) copies to Robin Miller, First Southwest Company, 300 West 6th Street, Suite 1940, Austin Texas 78701. The Request for Proposal can be viewed on the Corporation's website (www.tsahc.org) in the Professional Educators Home Loan Program section. Any questions about the Request for Proposal must be E-mailed to Cathy Dean or Robin Miller. Contact Cathy Dean at cdean@tsahc.org or faxed to (866) 285-7002. Contact Robin Miller at (214) 953-4174 or fax to (214) 953-8799. All questions and responses will be posted on the Corporation's website.

TRD-200501595
David Long
President
Texas State Affordable Housing Corporation
Filed: April 18, 2005

♦ ♦ ♦

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas by and through the Texas Commission on Environmental Quality and Texas Department of Health, now Department of State Health Services v. Joseph L. Davis*, Cause No. 2004-16498; in the 55th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant was the owner of property that contains apartments, a mobile home, and three single family homes in Harris County. Defendant was cited for allowing the ongoing discharge of sewage from the septic systems associated with those buildings. Defendant died and his heir at law agreed to this judgment.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction permanently enjoins Defendant to comply with all of the provisions of the environmental rules and regulations of the Texas Commission on Environmental Quality. Defendant has agreed to pay Plaintiffs $5,500.00, with $2,500.00 deferred, consisting of $2,500.00 in civil penalties to be divided equally between Harris County and the State of Texas, and $500.00 in attorney's fees, allocating $250.00 to Harris County, and $250.00 to the State of Texas, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at (512) 463-2110.

TRD-200501636
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: April 20, 2005

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Transportation (TxDOT), announces the issuance of **Request for Proposals (RFP) #303-5-10910**. TBPC seeks a 5 year lease of approximately 3,110 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is April 22, 2005, and the deadline for proposals is April 29, 2005 at 3:00 P.M. The award date is May 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58408.

TRD-200501534
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: April 13, 2005

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Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of **Request for Proposals (RFP) #303-5-10934**. TBPC seeks a 10 year lease of approximately 19,801 square feet of office space **or** 10,384 square feet of office space and 10,359 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is May 3, 2005, and the deadline for proposals is May 10, 2005 at 3:00 P.M. The award date is July 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58461.

TRD-200501535
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: April 13, 2005

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Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of Attorney General (OAG), announces the issuance of a **Request for Proposals (RFP) #303-5-10980**. TBPC seeks a five (5) year lease of approximately 7,246 sq. ft. of office space in Houston, Harris County, Texas.

The deadline for questions is May 3, 2005 and the deadline for proposals is May 10, 2005 at 3:00 P.M. The award date is May 20, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58506.

TRD-200501626
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: April 20, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 8, 2005, through April 14, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 20, 2005. The public comment period for these projects will close at 5:00 p.m. on May 20, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Azimuth Energy; Location: The project is located in Galveston Bay, within State Tract 322, approximately 9.6 miles northeasterly of Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 326040; Northing: 3256031. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, and production. Such activities include installation of a marine barge on a 64-foot by 210-foot shell pad, and a 10-foot by 20-foot production platform with attendant facilities. Depth at the project site is -12.3 feet below mean high water. CCC Project No.: 05-0228-F1; Type of Application: U.S.A.C.E. permit application #23710 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Lamson Nguyen ; Location: The project is located along English Bayou, at the southeast corner of 61st Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 321626; Northing: 3241037. Project Description: The applicant proposes to construct a 260-foot-long by 5-foot-wide pier with a 28-foot-wide by 5-foot-long t-head. This structure will also have attached three 3-foot-wide by 12-foot-long finger piers and two additional finger piers that are 4-foot-wide by 50-foot-long piers with 3-footwide by 10-foot-long finger piers. An additional 6-foot-wide by 420-foot-long pier with five 4-foot-wide by 120-foot-long finger piers that contain five 3-foot-wide by 12-foot-long finger piers will be constructed. The applicant also proposes to reclaim a total of 0.7 acres of land with earthen fill and place 0.37 acre of sand for a sand beach. To mitigate for the 1.05 acres of impacts to shallow water habitat from the reclamation of land and sand beach, the applicant proposes to construct 0.62 acres of intertidal marsh containing Spartina alterniflora. CCC Project No.: 05-0229-F1; Type of Application: U.S.A.C.E. permit application #23383(Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: General Truck Body; Location: The project is located along Buffalo Bayou, at 6901 Avenue V, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Settegast, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 278017; Northing: 3293131. Project Description: The applicant proposes to replace the existing bulkhead and dredge the bayou to -8 feet mean low tide for barge access. Approximately 4,500 cubic yards of material will be mechanically excavated impacting 0.36 acre of open water. The excavated material will be placed in the adjacent uplands. CCC Project No.: 05-0235-F1; Type of Application: U.S.A.C.E. permit application #23672 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at 512/475-0680.

TRD-200501599
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 19, 2005

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Comptroller of Public Accounts

Notice of Contract Awards

The Comptroller of Public Accounts (Comptroller) announces this notice of contract awards for consulting services under Chapter 2254, Subchapter B, Texas Government Code, for the reviews of selected county appraisal districts in the state as required by Section 403.3011, Texas Government Code; and Section 5.102, Texas Tax Code.

The following Contract awards were made to the following individuals and entities: Jim Yeats, P.O. Box 944, Nemo, Texas, 76070, for reviews of Bosque, Comanche, Erath and Johnson County Appraisal Districts, for a total aggregate amount not-to-exceed $32,668.00; Thomas Wade, 341 Jefferson, Cat Spring, Texas, 78933, for reviews of Atascosa, McMullen, Nueces, and Val Verde County Appraisal Districts, for a total aggregate amount not-to-exceed $29,535.00; Wiley Rudasill, P.O. Box 1382, Georgetown, Texas, for reviews of Brewster, Mason, Sabine, and Wharton County Appraisal Districts, for a total aggregate amount not-to-exceed $26,220.00; Keith Research & Evaluation, P.O. Box 160427, Austin, Texas, 78716, for reviews of Coryell, Hamilton, Archer, and Hansford County Appraisal Districts, for a total aggregate amount not-to-exceed $53,526.00; and Chuck Black, at 11911 B Charing Cross Road, Austin, Texas, 78759, for reviews of Rockwall, Collingsworth, and Kendall County Appraisal Districts, for a total aggregate amount not-to-exceed $30,226.00. Other contracts were awarded for under $15,000.00 each. The Contracts became effective on or about March 4, 2005, with terms extending through August 31, 2005, unless otherwise sooner terminated as provided therein.

The final reports for the reviews are due to be finalized no later than July 1, 2005.

The notice of the awards was published on Friday, March 11, 2005, in the State Electronic Business Daily know as the Texas Marketplace.

TRD-200501567
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 15, 2005

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Office of the Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/25/05 - 05/01/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/25/05 - 05/01/05 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 05/01/05 - 05/31/05 is 5.75% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 05/01/05 - 05/31/05 is 5.75% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200501601
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 19, 2005

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Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Neighborhood Credit Union (Dallas) seeking approval to merge with Tyler Credit Union (Tyler). Neighborhood Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501624
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 20, 2005

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Applications to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from BP Employees Credit Union, Alvin, Texas. The credit union is proposing to change its name to Brazos Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed

during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501623
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 20, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Neighborhood Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who work, reside or attend school in Ellis County, Texas, to be eligible for membership in the credit union.

An application was received from Credit Union of Texas, Dallas, Texas to expand its field of membership. The proposal would permit members and employees of Pintail Youth Ranch, Inc. to be eligible for membership in the credit union.

An application was received from Capitol Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in, and businesses located within Travis County, Texas, to be eligible for membership in the credit union.

An application was received from National 1st Credit Union, San Ysidro, California, to expand the field of membership of its branch offices located in Arlington, Texas. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located in the following United States Postal Zip Codes in Tarrant County, Texas: 75603, 76001, 76002, 76014, 76015, 76016, 76017, 76018, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200501622
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 20, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Texas Trust Credit Union (#1 & #2), Grand Prairie, Texas (Amended)- Persons who reside, work, worship or attend school in and businesses located within a 10-mile radius of the offices of Texas Trust Credit Union located at: 109 West F.M. 1382, Cedar Hill, TX 75104 and 1900 Country Club Drive, Mansfield, TX 76063.

Scott & White Employees Credit Union, Temple, Texas- See *Texas Register* issue dated January 28, 2005.

Application(s) to Amend Articles of Incorporation- Approved

Coastal Community & Teachers Credit Union, Corpus Christi, Texas- See *Texas Register* issue dated February 25, 2005.

Application(s) for a Foreign Branch Office- Approved

National 1st Credit Union (2), Arlington, Texas- Approved pursuant to Texas Finance Code §122.005(b), which grants the Commissioner the authority to waive or delay public notice of an action.

TRD-200501625
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 20, 2005

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East Texas Council of Governments

Request for Proposals for Consultant for Evaluation of Workforce Development Board Staff and Administrative Unit

The East Texas Council of Governments (ETCOG), as administrative unit for the East Texas Workforce Development Board, is soliciting proposals to evaluate the administrative function of Workforce Development Board staff. Activities solicited include interviews with board members, development of job descriptions and evaluation criteria as well as development of a request for proposals (RFP) for Board staffing in the event that it decides to release an RFP.

Proposer must have experience and expertise in management consulting, board governance issues and personnel management to perform the required tasks. Historically Underutilized Businesses (HUBs) are encouraged to apply.

The deadline for receipt of proposals will be 5:00 p.m. CDT, May 16, 2005. Proposals will not be accepted after 5:00 p.m. on this date.

Persons or organizations wishing to obtain a copy of the RFP should request by letter, fax or email. The fax number is (903) 983-1440 or email at wendell.holcombe@twc.state.tx.us. Request letters should be addressed to Wendell Holcombe, Director of Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore Texas 75662. Questions regarding the receipt of the RFP should be addressed to Wendell Holcombe at (903) 984-8641.

Proposers requesting additional information or clarification should submit requests in writing to Tony Martin, Chair, MOU Committee, NK-20 Lake Cherokee, Longview, Texas 75603 no later than May 9, 2005. Responses will be made in writing only and furnished to all parties receiving this RFP.

TRD-200501614
Wendell Holcombe
Director, Workforce Development - Programs
East Texas Council of Governments
Filed: April 19, 2005

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Request for Proposals for Independent Audit Services for Fiscal Year 2004-2005

The East Texas Council of Governments (ETCOG) is a political sub-division of the State of Texas governing the 14 county Uniform Planning Region 6, is soliciting proposals for independent audit services for fiscal year 2004-2005.

Audit will cover federal and state grants and all other programs administered by ETCOG for the twelve-month fiscal year ending September 30, 2005. Audit must comply with the Single Audit Act and related amendments as well as applicable Office of Management and Budget Circulars.

Potential respondents may request to obtain a copy of the RFP after April 21, 2005. The deadline for receipt of proposals will be 5:00 p.m. Thursday, May 12, 2005.

Persons or organizations wishing to obtain a copy of the RFP should request by letter, email or by phone. Request letters should be addressed to Judy Durland, CPA, Director of Finance, East Texas Council of Governments, 3800 Stone Road, Kilgore Texas 75662. Phone calls should be made to (903)984-8641 or email at judy.durland@twc.state.tx.us.

TRD-200501553
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: April 15, 2005

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Erich A. Norton; DOCKET NUMBER: 2004-1459-LII-E; TCEQ ID NUMBER: RN103984068; LOCATION: 201 East Main Street, Brady, McCulloch County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: 30 TAC §30.5(a), §344.4(a), and Texas Occupational Code, §1903.251, by failing to obtain an irrigator license from the TCEQ prior to repairing an existing landscape irrigation system; PENALTY: $250; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: Five Star Transportation; DOCKET NUMBER: 2002-1416-PWS-E; TCEQ ID NUMBERS: 1012510 and RN101179968; LOCATION: 7814 Miller Road, #3, Houston, Harris County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.46(e), and Texas Health and Safety Code (THSC), §341.033(a), by failing to continuously operate the facility under the direct supervision of an adequately trained and appropriately licensed water works operator; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement for all property within 150 feet of the well location; 30 TAC §290.46(m), by failing to properly maintain the facility; 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device; 30 TAC §290.110(c)(5)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a minimum free chlorine residual of 0.2 milligrams per liter in the far reaches of the distribution system; and 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block with a minimum thickness of six inches around the wellhead; PENALTY: $5,763; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(3) COMPANY: Hussain Liaqat dba Stop N Drive 33; DOCKET NUMBER: 2004-1085-PST-E; TCEQ ID NUMBERS: 54324 and RN101729127; LOCATION: corner of Highway 90 and Farm-to-Market Road 770, Raywood, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.22(a), by failing to pay petroleum storage tank fees; PENALTY: $3,150; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Khail Enterprises, Inc.; DOCKET NUMBER: 2003-0983-PST-E; TCEQ ID NUMBERS: 42171 and RN101433340; LOCATION: 5304 Highway 3, Dickinson, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3) - (6), and (7)(A), and THSC, §382.085(b), by failing to maintain and make available a copy of the California Air Resources Board Executive Order, a record of any maintenance conducted on the Stage II equipment, proof of attendance and completion of Stage II training for all employees, a record of the results of testing conducted at the site, and a record of the results of daily inspections conducted at the site; PENALTY: $1,100; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional

Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Marlin Gruber; DOCKET NUMBER: 2004-0679-PST-E; TCEQ ID NUMBERS: 0076375 and RN104137054; LOCATION: 211 Court Street Highway 90, Newton, Newton County, Texas; TYPE OF FACILITY: auto repair; RULES VIOLATED: 30 TAC §334.55(a)(2) and (3) and §334.401(a) and (b), by failing to obtain a registered and licensed UST contractor and an on-site supervisor to perform the removal of the UST system; and 30 TAC §334.6(a)(2), (b)(2), and (c), by failing to submit to the commission the required notifications before removing the USTs from the site; PENALTY: $4,500; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239- 2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Mesujo Services dba Mesujo South; DOCKET NUMBER: 2004-1066-WQ-E; TCEQ ID NUMBER: RN104316112; LOCATION: 1706 Wald Road, New Braunfels, Guadalupe County, Texas; TYPE OF FACILITY: mine of nonmetallic minerals; RULES VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with an industrial activity to water in the state through an individual permit or the Multi-Sector General Permit; PENALTY: $40,000; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239- 6996; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Panama Materials, LLC dba Panama Materials Quarry; DOCKET NUMBER: 2004-1105-WQ-E; TCEQ ID NUMBER: RN104220793; LOCATION: on the north service road, west of exit 376 of Interstate Highway 20, Santo, Palo Pinto County, Texas; TYPE OF FACILITY: rock quarry; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through either an individual permit or the Multi-Sector General Permit; PENALTY: $21,850; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239- 6996; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Ranger Gas Gathering, L.L.C.; DOCKET NUMBER: 2002-1054-AIR-E; TCEQ ID NUMBERS: EA0042C and RN100219534; LOCATION: County Road 340, approximately two miles west of Highway 717 North, Ranger, Eastland County, Texas; TYPE OF FACILITY: natural gas gathering and processing station; RULES VIOLATED: 30 TAC §121.121, and THSC, §382.054, by failing to obtain a Title V Federal Operating Permit prior to operation of emission sources; and 30 TAC §101.10(a)(2) and THSC, §382.085(b), by failing to submit emission inventories; PENALTY: $7,875; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Rodney Fincher; DOCKET NUMBER: 2004-1633-MSW-E; TCEQ ID NUMBER: RN104322318; LOCATION: Willis Point, Van Zandt County, Texas; TYPE OF FACILITY: unauthorized scrap tire transporter operation; RULES VIOLATED: THSC, §361.112(c), by failing to transport used or scrap tires to an authorized facility; and 30 TAC §328.55 and §328.57(c)(1), by failing to register with the commission before collecting and transporting scrap tires; PENALTY: $2,000; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Tres NLSS MG Corp. dba Sam's Food Mart; DOCKET NUMBER: 2004-1433- PST-E; TCEQ ID NUMBERS: 75271 and RN102216066; LOCATION: 4130 Allison Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST systems; and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to monitor its USTs for releases at a frequency of at least once per month not to exceed 35 days between each monitoring; PENALTY: $13,500; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200501607
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 19, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 30, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 30, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: City Wide Properties Windfern, Inc. dba Quik N Easy 3; DOCKET NUMBER: 2004-1708-PST-E; TCEQ ID NUMBERS: 44588 and RN102358603; LOCATION: 8360 Windfern Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks (USTs); PENALTY: $3,210; STAFF ATTORNEY: Courtney Hill, Litigation Division, MC

175, (512) 239-2436; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Enedina Garza dba G & S Mart; DOCKET NUMBER: 2004-1298-PST-E; TCEQ ID NUMBERS: 31104 and RN102424827; LOCATION: 503 South Bridge Street, Suite A, Hidalgo, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $800; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Lajitas Management, LLC dba Lajitas Utility Co., Inc.; DOCKET NUMBER: 2001-0901-MLM-E; TCEQ ID NUMBERS: 0220018, 14282-001, 12167-001(exp.), and RN102079365; LOCATION: on an unnamed road, 1/4 mile south of Highway 170 in the unincorporated community of Lajitas, Brewster County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §305.125(2), TWC, §26.121, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12167-001, Permit Condition 4(c), by failing to renew TPDES Permit Number 12167-001 prior to the expiration date; 30 TAC §305.125(1), §319.5(b), and TPDES Permit Number 14282-001, Effluent Limitations and Monitoring Requirements Number 2, by failing to maintain a chlorine residual of at least 1.0 milligrams per liter (mg/L) at the wastewater plant and failing to monitor chlorine residual of the effluent five times per week; 30 TAC §305.125(1) and TPDES Permit Number 14282-001, Operational Requirement Number 5, and Monitoring and Reporting Requirement Number 5, by failing to provide the 90 degree v-notch flow measuring device with a staff gauge and by failing to calibrate the ultrasonic totalizer measuring device on an annual basis; 30 TAC §319.7(a) and (c), by failing to maintain pH and dissolved oxygen calibration records; 30 TAC §319.7(a) and (d), and TPDES Permit Number 14282-001, Operational Requirement Number 1, by failing to submit monthly discharge monitoring reports; 30 TAC §305.62(a), §305.66(a)(1), and TPDES Permit Number 14282-001, Permit Condition Number 4.a, by failing to amend the existing water quality permit to authorize the effluent to be discharged to man-made ponds, commingled with raw well water and applied to the Lajitas Golf Course; 30 TAC §290.46(d)(2)(A), by failing to maintain a residual disinfectant concentration of at least 0.2 mg/L free chlorine throughout the distribution system for the water supply; 30 TAC §290.118(a) and (b), and Texas Health and Safety Code (THSC), §341.031(a) and §341.0315(c), by failing to provide public drinking water that meets the secondary constituent levels without written approval from the executive director; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assembly tested at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.46(1), by failing to flush all dead end mains at monthly intervals or more frequently as required; 30 TAC §290.42(d)(14), by failing to provide sampling taps for individual filter effluent and clear well discharges; 30 TAC §290.42(d)(11)(E)(i), by failing to equip each filter with a sampling tap to individually monitor the effluent turbidity; 30 TAC §290.42(d)(11)(E)(v), by failing to equip each filter with an operational device to indicate loss of head through the filter; 30 TAC §290.110(c)(5)(C), by failing to properly monitor the residual disinfectant concentration in the distribution system at bacteriological sampling sites; 30 TAC §290.46(m) and (t), by failing to initiate maintenance and housekeeping practices to ensure the reliability and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(2)(B), by failing to calibrate the on-line and bench top turbidimeters; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation for all enclosures in which chlorine gas was being stored or fed; 30 TAC §290.121 and §290.110(f)(1), by failing to maintain an up-to-date chemical and microbiological monitoring plan and to conduct chlorine residual tests at bacteriological sampling sites designated in the monitoring plan; 30 TAC §290.44(h)(1)(A) and §290.47(i), Appendix i, by failing to establish a cross connection control program to provide protection against contamination and health hazards; 30 TAC §290.45(a)(2) and §290.46(r), by failing to design, maintain, and operate the water supply to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; 30 TAC §290.41(c)(3)(N), by failing to provide each well with properly operating flow meters to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(2) and (3), by failing to have all roof openings and overflow pipes properly maintained; and 30 TAC §290.42(i), by failing to obtain from the commission a permit for discharging wastes from the water treatment process; PENALTY: $12,312; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Mirage Stop, Inc.; DOCKET NUMBER: 2003-1443-MWD-E; TCEQ ID NUMBERS: 003517-000 and RN101520344; LOCATION: 17141 Interstate Highway 10 East, Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and §319.5(b), TCEQ Permit Numbers 003517-001 and 003517-002, Final Effluent Limitations and Monitoring Requirement Number 1, and TWC, §26.121(e), by failing to monitor flow when required; 30 TAC §305.125(1) and §317.7(e), TCEQ Permit Number 003517-002, Operational Requirement Number 1, and TWC, §26.121(e), by failing to repair the fences surrounding the wastewater treatment plant and the on-site lift station; 30 TAC §305.125(1) and (5), TCEQ Permit Number 003517-002, Operational Requirement Number 1, and TWC, §26.121(e), by failing to properly operate and maintain the treatment facility; PENALTY: $10,900; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239- 6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Naurin, Inc. dba Shell III; DOCKET NUMBER: 2004-0922-PST-E; TCEQ ID NUMBERS: 13710 and RN101563476; LOCATION: 9512 C. F. Hawn Freeway, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain at the station a copy of the California Air Resources Board Executive Order for the Stage II vapor recovery system and any related components installed at the station; 30 TAC §115.246(3) and THSC, §382.085(b), by failing to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, and a general description of the part location in the UST system; 30 TAC §115.246(4) and THSC, §382.085(b), by failing to provide proof of attendance and completion of the station representative Stage II training and failing to provide documentation of all Stage II training for each employee for so long as that employee continues to work at the station; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §334.22(a), by failing to pay outstanding UST fees, including

penalties and interest; PENALTY: $2,400; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Rainbow Materials LP; DOCKET NUMBER: 2001-1170-MLM-E; TCEQ ID NUMBER: none; LOCATION: 2935 and 2885 Highway 71 East, Travis County, Texas; TYPE OF FACILITY: ready-mix concrete; RULES VIOLATED: TWC, §26.121, by discharging or allowing the discharge of concrete, concrete residue, and wash down to the water at the site; PENALTY: $8,000; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200501608
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 19, 2005

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Notice of Request for Public Comment and Notice of a Public Meeting - Clear Creek above Tidal

Notice of Request for Public Comment and Notice of a Public Meeting for Total Maximum Daily Loads and Update to the State Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft Total Maximum Daily Load (TMDL) concerning impairments to general water quality uses by addressing elevated levels of total dissolved solids (TDS) and chlorides in Clear Creek above Tidal. Clear Creek above Tidal is in the eastern portion of Fort Bend County and flows east to become the boundary of Harris and Brazoria Counties and then Harris and Galveston Counties. The cities of Houston, Pearland, Brookside Village, and Friendswood are located within this watershed. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for chloride and total dissolved solids. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition; endpoint identification; source analysis; linkage between sources and receiving waters; margin of safety; and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced in the following paragraphs. The TMDL will then be submitted to EPA Region 6 for approval as an update to the State of Texas Water Quality Management Plan.

A public meeting will be held on May 26, 2005, at 7:00 p.m. at the Pearland City Hall, Council Chambers, located at 3519 Liberty Drive, Pearland, Texas. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, a commission staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting. Only comments for the TMDL will be taken, no other TMDL projects will be discussed at the meeting.

Written comments should be submitted to Andrew Sullivan, TCEQ Water Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., June 3, 2005, and should reference *Two Total Maximum Daily Loads for Total Dissolved Solids and Chlorides in Clear Creek above Tidal*. For further information regarding the draft TMDL, please contact Andrew Sullivan at (512) 239- 4587 or *asulliva@tceq.state.tx.us*. Copies of the draft TMDL document can be obtained via the commission's Web site at *http://www.tceq.state.tx.us/water/quality/tmdl*, or by calling (512) 239-1627.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the Commission at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200501628
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 20, 2005

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Notice of Request for Public Comment and Notice of a Public Meeting - Lake Worth

Notice of Request for Public Comment and Notice of a Public Meeting for a Total Maximum Daily Load and Update to the State Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft Total Maximum Daily Load (TMDL) concerning polychlorinated biphenyls (PCBs) in fish tissue in Lake Worth, a reservoir located in northwest Tarrant County in north central Texas. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for PCBs in fish tissue in Lake Worth, Tarrant County. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition; endpoint identification; source analysis; linkage between sources and receiving waters; margin of safety; and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced in the following paragraphs. The TMDL will then be submitted to EPA Region 6 for approval as an update to the State of Texas Water Quality Management Plan.

A public meeting will be held on May 12, 2005, at 7:00 p.m., at the Fort Worth City Hall Building, City Council Chambers, located at 1000 Throckmorton, Fort Worth. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, a commission staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting.

Written comments should be submitted to Roger Miranda, TCEQ Water Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., May 20, 2005, and should reference *Total Maximum Daily Load for PCBs in Fish Tissue in Lake Worth, Tarrant County*. For further information regarding the draft TMDL, please contact Roger Miranda at (512) 239- 6278 or *rmiranda@tceq.state.tx.us*. Copies of the draft TMDL document can be obtained via the commission's Web site at *http://www.tceq.state.tx.us/water/quality/tmdl*, or by calling (512) 239-1627.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200501629
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 20, 2005

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Notice of Request for Public Comment and Notice of a Public Meeting - Lower Sabinal River

Notice of Request for Public Comment and Notice of a Public Meeting for a Total Maximum Daily Load and Update to the State Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft Total Maximum Daily Load (TMDL) concerning a nitrate-nitrogen impairment in the Lower Sabinal River in Uvalde, County, Texas. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL concerning nitrate-nitrogen pollutants in the Lower Sabinal River. The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition; endpoint identification; source analysis; linkage between sources and receiving waters; margin of safety; and loading allocations. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced in the following paragraphs. The TMDL will then be submitted to EPA Region 6 for approval as updates to the State of Texas Water Quality Management Plan.

A public meeting will be held in Sabinal, Texas, on May 19, 2005, at 7:00 p.m., at the Sabinal City Hall, located at 501 North Center Street, Sabinal. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, a commission staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting.

Written comments should be submitted to Ward Ling, TCEQ Water Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., May 27, 2005, and should reference *One Total Maximum Daily Load for Nitrate-Nitrogen in the Lower Sabinal River*. For further information regarding the draft TMDLs, please contact Ward Ling at (512) 239-6238 or *eling@tceq.state.tx.us*. Copies of the draft TMDL document can be obtained via the commission's Web site at *http://www.tceq.state.tx.us/water/quality/tmdl*, or by calling at (512) 239-1627.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the Commission at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200501627
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 20, 2005

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Notice of Updates to the State Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities that may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first identification of these sites was published in the January 16, 1987 issue of the *Texas Register* (12 TexReg 205). In accordance with the Act, §361.181, the commission must update the state Superfund registry annually to add new facilities in accordance with the Act, §361.184(a) and §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to delete facilities in accordance with the Act, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended or where cleanup is being adequately addressed by other means.

In accordance with the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

4. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

5. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

6. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

7. Texas American Oil. Located approximately three miles north of Midlothian on Old State Highway 67, Ellis County: waste oil recycling.

8. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

9. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

10. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

11. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial waste management.

12. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

13. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

14. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

16. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

17. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

18. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

19. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

20. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

21. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with the Act, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431, Kingsland, Llano County: two groundwater plumes.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

4. Hicks Field Sewer Corporation. Located approximately 1.8 miles west of the intersection of U.S. Highway 81/287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.

5. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead-acid battery recycling and copper coil salvage.

6. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead-acid battery recycling.

7. Phipps Plating. Located at 305 East Grayson Street, San Antonio, Bexar County: metal plating.

8. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

9. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

10. Voda Petroleum Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

11. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.

12. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Avinger Development Company (ADCO). Located on the south side of Texas 155, approximately 1/4 mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.

14. Harvey Industries, Inc. Located at the southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television cabinets and circuit board manufacturing.

15. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

16. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

17. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

18. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

19. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

20. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

21. Rogers Delinted Cottonseed Company. Located at the intersection of State Highway 380 and Farm-to-Market Road 547, approximately one mile east of Farmersville, Collin County: former cottonseed delinting processing facility.

22. McNabb Flying Service. Located 1.5 miles northwest of Alvin, approximately one mile east of State Highway 6, at the intersection of Brazoria County roads 146 and 539, Brazoria County: aerial pesticide applicator.

23. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

24. Poly-Cycle Industries, Jacksonville. Located on the south side of the city at 2505 South Jackson Street in Cherokee County: lead acid battery chips recycler and lead recovery.

Since the last *Texas Register* publication on September 24, 2004 (29 TexReg 9218), the TCEQ has determined that one facility, Bailey Metal Processors, Inc., McCulloch County, may pose an imminent and substantial endangerment to public health and safety or the environment, and in accordance with the Act, §361.184(a), has been added to the list of sites proposed to the state Superfund registry. Also, the TCEQ has determined that one site, Avinger Development Company (ADCO) was not being addressed adequately under the voluntary cleanup program, and in accordance with the Act, §361.189(c), was moved back to the state Superfund registry as a proposed site. No additional sites were proposed to the state Superfund registry.

To date, 34 sites have been deleted from the state Superfund registry in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344): Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Crim-Hammett, Rusk County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Sampson Horrice, Dallas County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-200501603
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 19, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of April 13, 2005 through April 20, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AUS-TEX PARTS & SERVICES, LTD. has applied for a renewal of TPDES Permit No. 14060-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 123,750 gallons per day. The facility is located approximately 2.6 miles northwest of the intersection of State Highway 21 and County Road 127 in Hays County, Texas.

CITY OF AUSTIN ELECTRIC UTILITY DBA AUSTIN ENERGY which operates the Sandhill Energy Center, a gas-fired electric generating station has applied for a renewal of TPDES Permit No. WQ0004351000, which authorizes the discharge of cooling tower blowdown and previously monitored effluents (consisting of cooling water drained from condensers and other cooling equipment during maintenance periods, metal cleaning wastes, and low volume wastes) at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001. The facility is located at 13005 Fallwell Lane, approximately two miles east of the intersection of State Highway 71 and Fallwell Lane, Travis County, Texas.

CITY OF CLARKSVILLE CITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014572001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 95,000 gallons per day. The facility will be located 4,050 feet south of the intersection of U.S. Highway 80 and Texas Street in Gregg County, Texas.

DEL VALLE INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. WQ0014567001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via non-public access subsurface drip irrigation with a minimum area of 3.22 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located at 5604 Farm-to-Market Road 1327, approximately 5,200 feet northeast of the intersection of Farm-to-Market Road 1327 and Farm-to-Market Road 1625 in Travis County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 142 has applied for a major amendment to TPDES Permit No. 14408-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 800,000 gallons per day to an annual average flow not to exceed 1,200,000 gallons per day. The facility is located on Fulshear Gaston Road, approximately 1.15 miles southwest of the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 723, in Fort Bend County, Texas.

FREER WATER CONTROL AND IMPROVEMENT DISTRICT has applied for a renewal of Permit No. 10088-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 280,000 gallons per day via surface irrigation of 250 acres of nonpublic access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located adjacent to State Highway 16 and 0.5 mile north of the Town of Freer in Duval County, Texas.

CITY OF LYTLE has applied for a renewal of TPDES Permit No. 10096-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 2,300 feet southeast of the intersection of Farm-to-Market Road 3175 and Interstate Highway 35 in Atascosa County, Texas.

CITY OF MATHIS has applied for a renewal of TPDES Permit No. 10015-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 947,000 gallons per day. The facility is located approximately 1.25 miles northwest of the intersection of State Highway Spur 198 and Farm-to-Market Road 1068, along the access road northwest extension of San Patricio Avenue in the City of Mathis in San Patricio County, Texas.

THE CITY OF PERRYTON has applied for a renewal of Permit No. 10248-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 1,400,000 gallons per day via surface irrigation of 570 acres of agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.5 mile south of Perryton City Limits on U. S. Highway 83 and thence east 1.25 miles to the plant site in Ochiltree County, Texas.

SAN ANGELO PACKING COMPANY, INC. AND THE ESTATE OF JIMMY STOKES which operates a meat packing plant, has applied for a renewal of Permit No. WQ0003901000, which authorizes the disposal of process wastewater from a slaughterhouse, utility wastewater, and storm water at a daily average flow not to exceed 150,000 gallons per day via spray irrigation of 208 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located on the Atchison Topeka & Santa Fe Railway, 5,000 feet east and 4,000 feet south of the intersection of Armstrong Road and 50th Street in the City of San Angelo, Tom Green County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF AMARILLO, P.O. Box 1971, Amarillo, Texas 79105-1971, to authorize that the chronic and acute biomonitoring requirements apply to Outfall 001/002, instead of Outfall 001 and 002. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,000,000 gallons per day. The facility is located approximately four miles east-southeast of the intersection of State Highway Spur 335 (Hollywood Road) and Farm-to-Market Road 1541 (Washington Street) in Randall County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 191 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize an additional interim I phase at a daily average flow not to exceed 336,000 gallons per day and an interim II phase at a daily average flow not to exceed 476,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 2,000 feet south of Farm-to-Market Road 1960 and 2,000 feet west of Cutten Road, adjacent to the Southern Pacific Railroad in Harris County, Texas.

TRD-200501635
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 20, 2005

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Notice of Water Rights Application

Notices mailed April 14, 2005 through April 18, 2005.

APPLICATION NO. 5850; TXU Mining Company LP (TXU or Applicant), 1601 Bryan Street, Dallas, Texas 75201-3411, applicant, seeks a term Water Use Permit pursuant to Texas Water Code §11.121 and Texas Commission on Environmental Quality (TCEQ) Rules 30 Texas Administrative Code §§295.1, et seq. Applicant seeks authorization to divert and use not to exceed 100 acre-feet of water per year within the Tankersley Creek and Hart Creek watersheds for lignite surface mining purposes (dust suppression and other mining activities) in the Monticello Lignite Mining Area (LMA) in Titus County, Texas. The Tankersley Creek watershed includes Dragoo Creek, several unnamed tributaries of Tankersley Creek and Tankersley Creek. The Hart Creek watershed includes an unnamed tributary of Hart Creek, Hayes Creek, and Hart Creek. Tankersley Creek and Hart Creek are both tributaries of Big Cypress Creek in the Cypress Basin. The water will be diverted from multiple diversion points located in the watersheds within the boundary of the lignite mine property upstream of thirteen proposed diversion points. The combined diversion rate will not exceed 13.4 cubic-feet-per-second (6,000 gallons-per-minute). The proposed diversion points are located in the Joseph Leech Survey, Abstract No. A-337 approximately three to five miles southwest of Mount Pleasant in Titus County. For a complete description of the diversion points, contact the Office of the Chief Clerk at the address indicated below, or view the full notice at the public notice web site www.tceq.state.tx.us/comm_exec/cc/pub_notice.html. Applicant also seeks authorization to maintain seven existing reservoirs impounding a combined total of 2,771 acre-feet of water for domestic and livestock purposes after the cessation of mining activity in the year 2014. The seven on-channel reservoirs are located approximately three to five miles southwest of Mount Pleasant in Titus County. For a complete description of the reservoirs, contact the Office of the Chief Clerk at the address indicated below, or view the full notice at the public notice web site given above. Approximately 1,200 acre-feet of groundwater per year through the year 2006 and 600 acre-feet of water per year through the remainder of the life of the mine will be obtained from de-watering activities during mining operations. This water will be discharged throughout the Tankersley Creek/Hart Creek watersheds. Ownership of the mining rights in TXU Mining Company LP's Monticello LMA is held under multiple mining leases as evidenced by warranty deeds and leases filed in the application filed with the Texas Railroad Commission and in the Deed Records of Titus County, Texas. The Commission will review the application as submitted by the applicant(s) and may or may not grant the application as requested. The application and required fees were received on June 5, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 31, 2004. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12-4161C; The City of Abilene, P.O. Box 60, Abilene, Texas 79604, (City or Applicant) seeks an amendment to Certificate of Adjudication No. 12-4161 pursuant to Texas Water Code §§11.122, 11.042, and 11.046 and TCEQ Rules 30 Texas Administrative Code §§295.1, et seq. Certificate of Adjudication No. 12-4161 authorizes the owner to maintain an existing dam and reservoir on Elm Creek (Lake Fort Phantom Hill) and impound therein not to exceed 73,960 acre-feet of water. Certificate of Adjudication No. 12-4161B contains a typographical error in the Use Paragraph 1.a. which states the owner is authorized to divert and use not to exceed 25,650 acre-feet for municipal purposes. As reflected in the other sections of the certificate, the owner is actually authorized to divert and use 25,690 acre-feet of water per year for municipal purposes. The applicant has requested that the diversion amount be corrected in this certificate under 30 Texas Administrative Code §50.145(b). The owner is further authorized to

divert and use 25,650 acre-feet of water per year for municipal purposes, 4,000 acre-feet of water per year for industrial purposes, and 1,000 acre-feet of water per year for agricultural purposes from the perimeter of the said reservoir at a maximum combined diversion rate of 69.52 cfs (31,200 gpm). The City seeks to amend Certificate of Adjudication No.12-4161 to use the bed and banks of several watercourses to transport the historical and future City return flows, up to 22 MGD (24,640 acre-feet per year), from two outfalls of the City of Abilene's Hamby Wastewater Treatment Facility (WWTF), to divert such flows, and to use such flows for agricultural, industrial, and municipal purposes within the City's corporate boundaries, extra-territorial jurisdiction, and water Certificate of Convenience and Necessity service areas, as such areas may be changed or amended from time to time in the future. The water discharged from the Hamby WWTF, authorized by Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10334-004, results from the City's use of water pursuant to rights it holds in Certificates of Adjudication Nos. 12-4139, 12-4150, 12-4161, 12-4165, contract water from the West Central Texas Municipal Water District (WCTMWD or District), and developed water resulting from the City's use of water purchased from the Colorado River Municipal Water District out of O.H. Ivie Reservoir in the Colorado River Basin. The City seeks authorization to divert up to the maximum amount of the City return flows currently authorized for discharge, at 22 MGD (24,640 acre-feet per year), less the 4,330 acre-feet of water authorized to be reused by Permit No. 4266 (for a total of 20,310 acre-feet per year); and at such time as the Water Supply Agreement between the City and the Brazos River Authority expires and Permit No. 4266 becomes void, the City seeks authorization to divert up to the maximum amount of the City return flows authorized for discharge, including the 4,330 acre-feet per annum of return flows contemplated in Permit No. 4266 (for a total of 24,640 acre-feet per year). Water discharged at Outfall 001 will be conveyed down the bed and banks of Freewater Creek, thence to Deadman Creek, and thence to the Clear Fork Brazos River, for approximately 69 river miles to Diversion Point No. 2 and approximately 134 river miles to Diversion Point No. 3. Water discharged at Outfall 002 will be conveyed down the bed and banks of Lake Kirby, thence to Cedar Creek, thence to Elm Creek, and to Lake Fort Phantom Hill for approximately 17 river miles to Diversion Point No. 1. The applicant indicates the average channel loss from Outfall 002 to Diversion Point No. 1 is 14%, from Outfall 001 to Diversion Point No. 2 is 42%, and from Outfall 001 to Diversion Point No. 3 is 60% of the discharged amount. The applicant proposes to divert at a rate of 69.52 cfs (31,200 gpm) from Diversion Point No. 1 and at a combined rate of 37.1 cfs (16,650 gpm), being the peak 2-hour discharge that is allowed by TPDES Permit No. 10334-004, from Diversion Point Nos. 2 and 3. The Cedar Ridge Reservoir site, at which Diversion Point No. 2 would be located, is a proposed reservoir site for which the City does not yet have storage capacity authorization. If the reservoir is permitted by a separate application and constructed, City return flows may be captured in and diverted from the reservoir and returned to the City for its use. Water diverted from Diversion Point No. 3 will be piped directly into Hubbard Creek Reservoir, owned and operated by the WCTMWD, thence commingled with other waters in the reservoir and then diverted and piped to the City through existing diversion and transmission infrastructure to City-owned water treatment plant(s) for treatment and subsequent use. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on July 15, 2004. Additional fees and information were received on August 27 and September 30, 2004 and February 11, 2005. The application was accepted for filing and declared administratively complete on October 14, 2004. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice. For a complete description of the discharges authorized under TPDES Permit No. 10334-004 and the diversion locations requested under this application, contact the Office of the Chief Clerk at the address indicated below, or view the full notice at the public notice web site www.tceq.state.tx.us/comm_exec/cc/pub_notice.html.

APPLICATION NO. 21-3184B; John E. Minne et al. (consisting of Elizabeth L. Minne) and Elizabeth L. Minne et al. (consisting of ELM Investments, Ltd.), 16127 FM 470, Tarpley, Texas 78883, applicants, seek to amend Certificate of Adjudication No. 21-3184 pursuant to Texas Water Code §11.122 and TCEQ Rules 30 Texas Administrative Code §§295.1, et seq. Applicants own Certificate of Adjudication 21-3184, which authorizes the maintenance of two existing reservoirs on Spring Creek, tributary of Hondo Creek, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin, and the diversion of 160 acre-feet of water per year from two diversion points, one on each of the reservoirs, at a maximum combined diversion rate of 1.07 cfs (480 gpm) for the irrigation of 750 acres out of a group of tracts of land totaling 2,076.2 acres in Bandera County, Texas. The Certificate also authorizes the pumping of private groundwater into the reservoirs for maintenance and for subsequent irrigation purposes. Applicants seek to maintain an existing on-channel reservoir (Reservoir No. 3) on Hondo Creek for agricultural (irrigation) purposes. The reservoir has a surface area of 3.5 acres and impounds 49.5 acre-feet of water. The dam is located in the A. Burnet Original Survey No. 535, Abstract No. 38 in Bandera County, Texas, and Station 0.00 on the centerline of the dam is located at Latitude 29.650° N, Longitude 99.316° W, also described as bearing N 42.883° E, 1062.73 feet from the southwest corner of the A. Burnet Survey, approximately 3.5 miles west of Tarpley and 15 miles southwest of Bandera, Texas. Applicants also seek to add two diversion points also on Hondo Creek, one upstream of the confluence with Spring Creek on the aforementioned reservoir, and one downstream. The upstream point (Diversion Point No. 4) will be on the west bank Reservoir No. 3 at Latitude 29.662° N and Longitude 99.329° W, also bearing N 42.25° E, 1,090.65 feet from the southwest corner of the A. Burnet Survey in Bandera County. The downstream point (Diversion Point No. 3) will be on the west bank of Hondo Creek at Latitude 29.654° N and Longitude 99.315° W, also bearing S 71.150° E, 5,676.00 feet from the northwest corner of the John Littlewood Original Survey No. 532, Abstract No. 249, in Bandera County. Applicants also seek to increase their maximum diversion rate to 2.228 cfs (1,000 gpm). No changes to diversion amount are requested. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on September 21, 2004, and requested information and fees were received on December 3, 2004 and March 16, 2005. The application was reviewed, declared to be administratively complete, and filed with the Office of the Chief Clerk on March 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public.

You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501634
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 20, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2005**. Section 7.075 also requires that the TCEQ promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-4468 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087, and must be received by **5:00 p.m. on June 20, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in writing.

(1) COMPANY: 7-Eleven, Inc. dba 7-Eleven Store 18765; DOCKET NUMBER: 2004-1606- PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 9137, Regulated Entity Number (RN) 102013927; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(J) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; PENALTY: $2,425; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Atlanta; DOCKET NUMBER: 2004-0931-PWS-E; IDENTIFIER: Public Water Supply (PWS) 034001, RN101386399; LOCATION: Atlanta, Cass County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D) and THSC, §341.0315(c), by failing to provide adequate service pump capacity; and 30 TAC §290.46(e)(3)(C) and (m) and THSC, §341.033(a), by failing to employ at least two Class C certified operators and by failing to initiate maintenance and housekeeping practices; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Naeemuddin Mohammad dba Big Deli Food Mart; DOCKET NUMBER: 2004- 1704-PST-E; IDENTIFIER: PST Facility Identification Number 4273, RN101543726; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(4) COMPANY: Jack and Rhonda Vanover dba Casey Homes Estates Public Water Supply; DOCKET NUMBER: 2004-1984-PWS-E; IDENTIFIER: PWS Number 1520188, RN102679305; LOCATION: Wolfforth, Lubbock County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(1)(A) and THSC, §341.033(d), by failing to collect bacteriological samples; 30 TAC §290.122(c)(2), by failing to issue public notice for failure to collect bacteriological samples; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $7,290; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414- 3520, (806) 796-7092.

(5) COMPANY: Cemex, Inc.; DOCKET NUMBER: 2004-1006-AIR-E; IDENTIFIER: Air Account Number EB0121R, RN100213305; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: cement manufacturing; RULE VIOLATED: 30 TAC §101.20(2) and §116.115(c), Air New Source Permit Number 5296, 40 Code of Federal Regulations (CFR) §§63.6(e)(3), 63.1342, 63.1344(a), 63.1350, and 63.1354(b)(4), and THSC, §382.085(b), by failing to comply with the dioxin emission limit, by failing to comply with the permitted opacity limits, by failing to operate consistently with the requirements of the plant's startup, shutdown, and malfunction plan, by failing to comply with the established maximum temperature of 725 degrees Fahrenheit, and by failing to comply with the monitoring requirements; 30 TAC §122.145(2) and §122.146(2) and THSC, §382.085(b), by failing to submit timely the annual federal operating compliance certification and associated deviation report and by failing to complete the deviation report; and 30 TAC §101.201(e) and THSC, §382.085(b), by failing to adequately notify the TCEQ involving 70-excess emission events; PENALTY: $123,608; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(6) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2003-0646- AIR-E; IDENTIFIER: Air Account Number JE0508W, RN100209857; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals and allied products; RULE VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and §116.115(b)(2)(F) (formerly 30 TAC §116.115(b)(2)(G)), Permit

Numbers 18568 and 21101, and THSC, §382.085(b), by failing to prevent visible emissions and maintain emission rates and by failing to comply with the permitted volatile organic compound (VOC) emission limits and repair/maintain equipment; 30 TAC §116.115(b)(2)(F) and (c), Permit Number 18568, and THSC, §382.085(b), by failing to report the VOC concentration in the exhaust; 30 TAC §101.20(1) and (2), 40 CFR §60.18 and Subpart FF, §61.355(a)(1)(i), and THSC, §382.085(b), by failing to operate the cumene unit process flare and by failing to determine the annual benzene waste; 30 TAC §101.201(a)(2)(C), (H), (b)(3), (8), and (9), §101.211(b)(10), and THSC, §382.085(b), by failing to properly notify the TCEQ of reportable emission/maintenance events; THSC, §382.085(a), by failing to prevent unauthorized emissions; and 30 TAC §116.715(a), Permit Number 32713, and THSC, §382.085(b), by failing to submit annual summaries for criteria pollutants; PENALTY: $51,816; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Cox Texas Partners, Inc. dba Waco Tribune-Herald; DOCKET NUMBER: 2005-0159-PST-E; IDENTIFIER: PST Facility Identification Number 25088, RN100577527; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: private fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $950; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Jerry Bell dba Crossroads Country Store; DOCKET NUMBER: 2004-1794- PST-E; IDENTIFIER: PST Facility Identification Number 44509, RN101800142; LOCATION: Jefferson, Marion County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $4,280; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Desert Eagle Distributing of El Paso, Inc.; DOCKET NUMBER: 2004-2003- AIR-E; IDENTIFIER: Air Account Number EE1107R, RN100815208; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: station that dispenses gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the 2.7% by weight oxygenated fuel requirements; PENALTY: $800; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: Domco Products Texas, L.P. dba Tarkett Texas; DOCKET NUMBER: 2004- 1186-AIR-E; IDENTIFIER: Air Account Number HG0772C, RN100896729; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: tile manufacturing; RULE VIOLATED: 30 TAC §101.352(b) and THSC, §382.085(b), by failing to hold adequate quantity of allowances in the compliance account; and 30 TAC §101.359 and THSC, §382.085(b), by failing to submit a completed ECT-1 form; PENALTY: $2,736; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: ELG Metals, Inc.; DOCKET NUMBER: 2005-0096-IWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0003324000, RN102185733; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: scrap metal processing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0003324000, and the Code, §26.121(a), by failing to comply with oil and grease, total organic carbon, pH, and total lead daily maximum permit limits; PENALTY: $2,880; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(12) COMPANY: G.M. Brothers, Inc. dba Golden Grocery; DOCKET NUMBER: 2005-0312- PST-E; IDENTIFIER: PST Facility Identification Number 75068, RN102220688; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $640; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Kingsville; DOCKET NUMBER: 2004-1920-MWD-E; IDENTIFIER: TPDES Permit Number 10696-004, RN101612877; LOCATION: Kingsville, Kleberg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and TPDES Permit Number 10696-004, by failing to comply with permit effluent limits and by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $9,100; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Jimmy Colter & Jimmy Holt dba Linden Fuel Center; DOCKET NUMBER: 2004-0578-PST-E; IDENTIFIER: PST Facility Identification Number 0073859, RN102255791; LOCATION: Linden, Cass County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to provide proper overfill prevention equipment; the Code, §26.121(a), by failing to prevent an unauthorized discharge; and 30 TAC §§334.10(b), 334.49(e)(2), and 334.50(e)(2), by failing to maintain records adequate to demonstrate compliance with release detection and corrosion requirements; PENALTY: $6,800; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2005-0008-AIR-E; IDENTIFIER: Air Account Number HG0537O, RN102523107; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 9395, and THSC, §382.085(b), by failing to limit emissions from the relief valves, fugitive components, and head gaskets; PENALTY: $7,550; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Mexia Independent School District; DOCKET NUMBER: 2004-1055-PST-E; IDENTIFIER: PST Facility Identification Number 66394; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: school bus refueling station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Moore Wallace North America, Inc. dba Wetmore & Company; DOCKET NUMBER: 2005-0170-AIR-E; IDENTIFIER: Air Account Number HG7255B, Operating Permit Number O-01684,

RN100215011; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: commercial lithographic printing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; 30 TAC §122.143(4), Operating Permit No. O-01684, and THSC, §382.085(b), by failing to conduct annual observations of stationary vents for visible emissions; and 30 TAC §116.315(a) and THSC, §382.085(b), by failing to submit a renew application for new source review permit number 25425; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239- 0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(18) COMPANY: Motiva Enterprises, LLC; DOCKET NUMBER: 2004-2026-AIR-E; IDENTIFIER: Air Account Number JE0095D, RN100209451; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 8404, and THSC, §382.085(b), by exceeding the permitted emissions limit from the emergency flare; PENALTY: $5,050; ENFORCEMENT COORDINATOR: Larry King, (512) 239-7037; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: National-Oil Well, L.P.; DOCKET NUMBER: 2005-0317-IWD-E; IDENTIFIER: TPDES Permit Number 12314001, RN103886057; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12314001, and the Code, §26.121(a), by failing to maintain daily average total suspended solids within the permitted limits; and 30 TAC §21.4(e) and §205.6 and the Code, §5.702(a), by failing to pay outstanding general permits storm water and toxic chemical release fees; PENALTY: $2,112; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Residual Fuels, Inc.; DOCKET NUMBER: 2004-1912-PST-E; IDENTIFIER: PST Facility Identification Number 10730, RN101823300; LOCATION: Graham, Young County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system and by failing to permit an operability test on the cathodic protection system; 30 TAC §334.50(a)(1)(A), (b)(1)(A), (2)(A)(i)(III), (ii)(I) and (II), and the Code, §26.3475(a) and (c)(1), by failing to provide a method or combination of methods of release detection, by failing to monitor tanks in a manner which will detect a release, by failing to annually test the line leak detectors, and by failing to test the piping for releases; and 30 TAC §334.7(e)(2), by failing to ensure that the underground storage tank registration and self-certification forms are fully and accurately completed; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: Mohammad Jamshidi dba Super Stop; DOCKET NUMBER: 2004-1531-PST- E; IDENTIFIER: PST Facility Identification Number 35470, RN102264702; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Terry L. Leatherwood dba T Woods Grocery & Gas; DOCKET NUMBER: 2004-1587-PST-E; IDENTIFIER: PST Facility Identification Number 55629, RN101880540; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705- 5404, (915) 570-1359.

(23) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2005-0171-AIR-E; IDENTIFIER: Air Account Number HG0036S, RN100212109; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 21538, and THSC, §382.085(b), by failing to comply with the emissions limits stated in the maximum allowable emissions rates table; PENALTY: $3,550; ENFORCEMENT COORDINATOR: Kensley Greuter, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Via Bayou Inc. dba Via Bayou RV Resort; DOCKET NUMBER: 2004-1544- MWD-E; IDENTIFIER: TPDES Permit Number 14326-001, RN102887312; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14326-001, and the Code, §26.121(a), by failing to comply with its permitted effluent limits; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2005-0077-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1429, RN102980687; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: municipal solid waste transfer station; RULE VIOLATED: 30 TAC §328.60(a) and THSC, §361.112(a), by failing to obtain a scrap tire storage site registration; and 30 TAC §330.150(1) and MSW Permit Number 1429, by failing to have current, updated site operation and site development plans; PENALTY: $3,255; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200501602
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 19, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Angelo	West Texas Medical Associates	L05849	San Angelo	00	04/12/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Northwest Texas Healthcare System Inc DBA Northwest Texas Hospital	L02054	Amarillo	75	04/04/05
Austin	Austin Diagnostic Clinic	L05646	Austin	04	04/07/05
Austin	Eye Physicians of Austin PA	L00570	Austin	18	04/01/05
Austin	Seton Medical Center	L02896	Austin	82	04/08/05
Austin	Austin Radiological Association	L00545	Austin	107	04/12/05
Channelview	Enpro Systems LTD	L04990	Channelview	16	03/31/05
Columbus	Columbus Community Hospital	L03508	Columbus	12	04/12/05
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	42	04/11/05
Corpus Christi	Radiology & Imaging of South Texas LLP DBA Alameda Imaging Center	L05182	Corpus Christi	14	04/07/05
Dallas	Mallinckrodt Inc	L03580	Dallas	49	03/30/05
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	155	03/31/05
Decatur	Wise Regional Health System	L02382	Decatur	22	04/05/05
Eagle Pass	Fort Duncan Medical Center	L05640	Eagle Pass	02	03/29/05
El Paso	EP Premier Medical Group PA DBA Premier Diagnostic Center	L05198	El Paso	05	04/05/05
El Paso	Philips Lighting Company	L03823	El Paso	14	04/04/05
El Paso	Biotech Pharmacy Incorporated	L05335	El Paso	11	04/13/05
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	13	03/30/05
Frisco	Tenet Hospital LTD DBA Centennial Medical Center	L05768	Frisco	02	04/06/05
Grand Prairie	Richemont North America Inc	L05047	Grand Prairie	04	03/31/05
Houston	American Diagnostic Tech LLC	L05514	Houston	16	03/29/05
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	66	04/08/05
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	50	04/08/05
Houston	Memorial Hermann Hospital System Inc DBA Memorial Hermann Hospital	L00650	Houston	71	04/07/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	06	04/06/05
Houston	Proportional Technologies Inc	L04747	Houston	18	03/31/05
Houston	RJR Engineering LTD LLP	L05416	Houston	02	04/06/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Texas Nuclear Imaging Inc DBA Excel Diagnostics Imaging Clinic Medical Center	L05009	Houston	24	04/08/05
Houston	The PET Scan Center	L05411	Houston	07	04/07/05
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	55	03/30/05
Irving	Dallas-FT Worth Veterinary Imaging Center DBA Animal Imaging	L04602	Irving	05	04/07/05
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	56	04/05/05
Lubbock	University Medical Center	L04719	Lubbock	77	04/05/05
Midland	Eddy Merket Inc	L04275	Midland	05	03/29/05
Midland	HIS Inspection Inc	L04861	Midland	12	03/31/05
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	19	03/31/05
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	10	04/11/05
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	43	04/07/05
Odessa	Madhava Agusala MD PA	L05628	Odessa	01	04/06/05
Orange	Baptist Hospitals of Southeast Texas DBA Memorial Hermann Baptist Orange Hospital	L01597	Orange	26	04/08/05
Orange	Baptist Hospitals of Southeast Texas DBA Memorial Hermann Baptist Orange Hospital	L01597	Orange	27	04/11/05
Orange	Invista Inc	L05777	Orange	01	04/05/05
Plainview	Plainview Cardiology PA	L05446	Plainview	05	03/31/05
Port Arthur	The Medical Center of Southeast Texas LP DBA Park Place Medical Center	L01707	Port Arthur	56	03/30/05
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	36	04/07/05
San Antonio	ACA SA LTD DBA Sendero Imaging & Treatment Center	L05567	San Antonio	07	03/31/05
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	14	03/28/05
San Antonio	Petnet Pharmaceuticals Inc DBA Petnet San Antonio	L05569	San Antonio	07	04/08/05
San Antonio	University of Texas at San Antonio	L01962	San Antonio	52	04/05/05
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	46	04/05/05
Sweeny	Conocophillips Company	L00337	Sweeny	43	04/08/05
Tatum	TXU Power	L04593	Tatum	08	03/31/05
Throughout Tx	Team Cooperheat-MQS Inc DBA Cooperheat-MQS	L00087	Alvin	127	03/31/05
Throughout Tx	Team Cooperheat-MQS Inc DBA Cooperheat-MQS	L00087	Alvin	128	04/05/05
Throughout Tx	Radiation Technology Inc	L04633	Austin	18	03/30/05
Throughout Tx	GK Techstar LLC DBA Techstar	L05562	Deer Park	03	04/07/05
Throughout Tx	Encon International Inc	L04528	El Paso	11	03/31/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	French Engineering Inc	L04572	Houston	05	04/08/05
Throughout Tx	Irisndt Inc	L04769	Houston	16	04/05/05
Throughout Tx	Metco	L03018	Houston	151	03/28/05
Throughout Tx	Pathfinder Energy Services Inc	L05236	Houston	10	03/30/05
Throughout Tx	Professional Service Industries Inc	L03642	Houston	22	04/04/05
Throughout Tx	Roxar Inc	L05547	Houston	06	04/04/05
Throughout Tx	Stork Southwestern Laboratories Inc	L00299	Houston	122	03/30/05
Throughout Tx	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	196	04/12/05
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	119	04/13/05
Throughout Tx	Gamma Surveys LLC	L05155	LaPorte	09	03/30/05
Throughout Tx	Anatec Inc	L04865	Nederland	60	03/31/05
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	14	04/04/05
Throughout Tx	Big State X-Ray	L02693	Odessa	41	04/08/05
Throughout Tx	Black Warrior Wireline Corp	L04473	Odessa	19	04/08/05
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	38	03/31/05
Throughout Tx	Quantum Technical Services Inc	L03731	Pasadena	22	04/04/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	50	04/04/05
Throughout Tx	Duininck Brothers Inc	L03957	Roanoke	11	03/30/05
Throughout Tx	All American Inspection Inc	L01336	San Antonio	52	04/07/05
Throughout Tx	Drash Consulting Engineers Inc	L04724	San Antonio	14	03/29/05
Throughout Tx	IHI Southwest Technologies Inc	L05278	San Antonio	08	03/31/05
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	09	04/06/05
Throughout Tx	GCT Inspection Inc	L02378	South Houston	83	04/05/05
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	68	04/08/05
Throughout Tx	BJ Services Company USA	L02684	Tomball	47	03/31/05
Trophy Club	Trophy Club Medical Center LP DBA Trophy Club Medical Center	L05827	Trophy Club	01	04/08/05
Vernon	Wilbarger General Hospital	L03047	Vernon	15	04/07/05
Vernon	Wilbarger General Hospital	L03047	Vernon	16	04/13/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bowie	Bowie Hospital Authority DBA Bowie Memorial Hospital	L02327	Bowie	15	04/13/05
Orange	Cardinal Health 414 Inc DBA Cardinal Health Nuclear Pharmacy Services	L04785	Orange	31	03/30/05
San Angelo	San Angelo Hospital LP DBA San Angelo Community Medical Center	L02487	San Angelo	36	04/11/05
Sequin	Guadalupe Valley Hospital	L02292	Sequin	26	04/06/05
Throughout Tx	Halliburton Energy Services Inc	L00442	Houston	103	03/30/05
Throughout Tx	Jones Brothers Dirt & Paving Contractors	L04783	Odessa	07	03/29/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05428	Austin	05	04/12/05
Fort Worth	Fort Worth Osteopathic Hospital Inc DBA Osteopathic Medical Center of Texas	L00730	Fort Worth	53	04/11/05
Throughout Tx	Martin Amarietta Aggregates of Arkansas Inc	L04790	Hot Springs	05	04/05/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200501604
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 19, 2005

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Notice of Agreed Order with Memorial Hermann Healthcare System, dba Hermann Breast Center

On April 18, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Memorial Hermann Healthcare System, dba Hermann Breast Center (registrant-M00528) of Houston. A total administrative penalty in the amount of $4,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501606
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: April 19, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 16, 2005, to receive public comment on proposed Consumer Directed Services (CDS) payment rates for respite and adjunct personal assistance services (PAS) in the Medically Dependent Children Program. This program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective June 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on May 16, 2005, at 9:00 a.m. in the Permian Basin Conference Room of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200, telephone number (512) 491-1358.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200, telephone number (512) 491-1358, by May 11, 2005, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code §355.456, relating to Reimbursement Rates.

TRD-200501570
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: April 15, 2005

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Providence Mockingbird Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Onesimo Hernandez Elementary School, 5555 Maple Avenue, Dallas, Texas 75235, at 6:00 p.m. on May 16, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Hines 68, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, equipping and rehabilitating a multifamily housing development (the "Development") described as follows: 251-unit multifamily residential rental development, of which a portion of the units will be for seniors, to be located at 1893 West Mockingbird Lane, Dallas County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501637
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 20, 2005

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Villas at Henderson Place) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Cleburne High School, 1501 Harlin Drive, Cleburne, Texas 76033, at 6:00 p.m. on May 18, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Cleburne Villas Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 180-unit multifamily residential rental development, of which a portion of the units will be for seniors, to be located at 1648 W. Henderson Street, Johnson County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501638
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 20, 2005

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Park Manor Senior Community) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Wakefield Elementary School, 400 Sunset Boulevard, Sherman, Texas 75092, at 6:00 p.m. on May 26, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $10,400,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to OHC/Park Manor Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 196-unit multifamily residential rental development to be located at approximately the east side of FM 1417, approximately 640 feet north of Park Avenue, Grayson County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing.

Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200501639
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 20, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by CATHOLIC KNIGHTS, a foreign Life, Accident, and/or Health company. The home office is in Milwaukee, WI.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501641
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 20, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of INTEGRITY ADMINISTRATORS, INC., a foreign third party administrator. The home office is LAS VEGAS, NEVADA.

Application for admission to Texas of JOHNSTON & ASSOCIATES, INC., a foreign third party administrator. The home office is FRANKLIN, TENNESSEE.

Application for incorporation in Texas of CBG SERVICES CORPORATION, a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501640
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 20, 2005

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Texas Department of Licensing and Regulation

Vacancies on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation announces vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board established by Texas Occupations Code, Chapter 1302. The pertinent rules may be found in 16 TAC §75.65. The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules, administering and enforcing this chapter, and setting fees.

The Committee is composed of six members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of one official of a municipality with a population of more than 250,000; one official of a municipality with a population of not more than 250,000; and four full-time licensed air-conditioning and refrigeration contractors, as follows: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and one member who holds a Class B license and practices in a municipality with a population of not more than 25,000. At least one appointed advisory board member must be an air conditioning and refrigeration contractor who employs organized labor and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board. Members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year. This announcement is for the positions of one official of a municipality with a population of more than 250,000, one Class A licensed contractor from a municipality with a population greater than 250,000, and one Class B licensed contractor from a municipality with a population of not more than 25,000.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200501631
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 20, 2005

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Vacancies on Elevator Advisory Board

The Texas Department of Licensing and Regulation announces vacancies on the Elevator Advisory Board established by Texas Health and Safety Code, Chapter 754, Subchapter B. The pertinent rules may be found in 16 TAC §74.65. The purpose of the Elevator Advisory Board is to advise the Texas Commission of Licensing and Regulation on the adoption of appropriate standards for the installation, alteration, operation and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including

programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announcement is for the positions of one licensed or registered engineer or architect and one public member.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200501632
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 20, 2005

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Vacancy on Licensed Court Interpreter Advisory Board

The Texas Department of Licensing and Regulation announces a vacancy on the Licensed Court Interpreter Advisory Board established by Texas Government Code, Chapter 57. The purpose of the Licensed Court Interpreter Advisory Board is to advise the Texas Commission of Licensing and Regulation in adopting rules and designing a licensing examination.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date of appointment; an active court administrator who has been a court administrator for at least the three years preceding the date of appointment; an active attorney who has been a practicing member of the state bar for at least the three years preceding the date of appointment; three active licensed court interpreters; and three public members who are residents of this state. Members serve staggered six year terms with the terms of one third of the members expiring on February 1, or each odd numbered year. This announcement is for one position of an active district, county, or statutory county court judge who has been a judge for at least the three years preceding the date of appointment.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200501633
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 20, 2005

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Vacancy on Medical Advisory Committee

The Texas Department of Licensing and Regulation announces a vacancy on the Medical Advisory Committee established by Texas Occupations Code, Chapter 2052. The pertinent rules may be found in 16 TAC §61.120. The purpose of the Medical Advisory Committee is to advise the Texas Commission of Licensing and Regulation on health issues for boxing event contestants including physical tests for contestants and registration requirements for ringside physicians.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of one trauma specialist; one ophthalmologist; one sports doctor; one neurologist; one emergency medical technician; and two public members. Members serve at the will of the Commission. This announcement is for one position of an emergency medical technician.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200501643
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 20, 2005

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Texas Lottery Commission

Correction of Error - Instant Game Number 553 "Fast Cash"

(Editor's Note: Due to a Texas Register error, language was omitted from Instant Game Number 553 "Fast Cash", which appeared in the April 15, 2005, issue of the Texas Register (30 TexReg 2304). The notice is being republished in its entirety. The paragraph omitted references 4.0 and precedes Figure 3. The paragraph should read: "4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 553. The approximate number and value of prizes in the game are as follows:")

1.0 Name and Style of Game.

A. The name of Instant Game No. 553 is "FAST CASH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 553 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 553.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEY BAG SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 553 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MONEY BAG SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 553 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (553), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 553-0000001-001.

K. Pack - A pack of "FAST CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrinkwrap.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FAST CASH" Instant Game No. 553 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FAST CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 twelve) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol the player wins the prize shown for that number. If a player reveals a moneybag symbol the player wins prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No duplicate non-winning prize symbols on a ticket.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. The auto win symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "FAST CASH" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "FAST CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FAST CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned

by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 553. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 553 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,753,920	8.62
$2	665,280	22.73
$4	423,360	35.71
$5	120,960	125.00
$10	90,720	166.67
$20	60,480	250.00
$50	17,640	857.14
$100	1,827	8,275.86
$500	1,008	30,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 553 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 553, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501605

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Instant Game Number 524 "Treasure Hunt"

1.0 Name and Style of Game.

A. The name of Instant Game No. 524 is "TREASURE HUNT". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 524 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 524.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: MONEY BAG SYMBOL, STACK OF COINS SYMBOL, BARREL SYMBOL, TREASURE MAP SYMBOL, HOOK SYMBOL, PARROT SYMBOL, HAT SYMBOL, ANCHOR SYMBOL, MOON SYMBOL, SHARK SYMBOL, SAND DOLLAR SYMBOL, PALM TREE SYMBOL, SEA HORSE SYMBOL, HELM SYMBOL, SHOVEL SYMBOL, PICK SYMBOL, GEM SYMBOL, SUN SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000 and $25,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 524 - 1.2D

PLAY SYMBOL	CAPTION
MONEY BAG SYMBOL	MBAG
STACK OF COINS SYMBOL	COINS
BARREL SYMBOL	BARRL
TREASURE MAP SYMBOL	TMAP
HOOK SYMBOL	HOOK
PARROT SYMBOL	PARRT
HAT SYMBOL	HAT
ANCHOR SYMBOL	ANCHR
MOON SYMBOL	MOON
SHARK SYMBOL	SHARK
SAND DOLLAR SYMBOL	SAND$
PALM TREE SYMBOL	PALM
SEA HORSE SYMBOL	SHRSE
HELM SYMBOL	HELM
SHOVEL SYMBOL	SHOVL
PICK SYMBOL	PICK
GEM SYMBOL	GEM
SUN SYMBOL	SUN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 524 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $2,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (524), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 524-0000001-001.

L. Pack - A pack of "TREASURE HUNT" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 001 will be on the top page; tickets 002 and 003 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TREASURE HUNT" Instant Game No. 524 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TREASURE HUNT" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of the YOUR ITEMS play symbols to any of the TREASURE ITEMS play symbols the player wins prize indicated for that item. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No 3 or more like non-winning prize symbols on a ticket.

C. No duplicate non-winning Your Items play symbols on a ticket.

D. No duplicate Treasure Items play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "TREASURE HUNT" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TREASURE HUNT" Instant Game prize of $2,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TREASURE HUNT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TREASURE HUNT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TREASURE HUNT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 524. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 524 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,500,000	8.00
$4	768,000	15.63
$5	144,000	83.33
$10	156,000	76.92
$20	48,000	250.00
$50	48,000	250.00
$200	16,700	718.56
$2,000	50	240,000.00
$25,000	18	666,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.48. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 524 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 524, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501543
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 15, 2005

♦ ♦ ♦

Instant Game Number 600 "Giant Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 600 is "GIANT JUMBO BUCKS". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 600 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 600.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, JUMBO SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 600 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FFN
15	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
JUMBO SYMBOL	WINX5
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN

$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 600 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (600), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 600-0000001-001.

L. Pack - A pack of "GIANT JUMBO BUCKS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs the alternate. One will show the front of ticket 001 and back of 075 while the other fold will show back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GIANT JUMBO BUCKS" Instant Game No. 600 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GIANT JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the four SERIAL NUMBERS play symbols the player wins prize shown for that number. If a player reveals a JUMBO play symbol the player wins 5 times the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers on a ticket.

C. No duplicate Serial Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

G. The JUMBO symbol will only appear on intended winning tickets and only as designated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GIANT JUMBO BUCKS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIANT JUMBO BUCKS" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIANT JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 600. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 600 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,500,800	5.36
$10	563,000	15.00
$15	214,400	37.50
$20	160,800	50.00
$50	107,200	75.00
$100	13,199	609.14
$500	1,005	8,000.00
$1,000	201	40,000.00
$5,000	217	382,857.14
$50,000	11	730,909.09

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.17. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 600 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 600, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501544
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 15, 2005

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 8, 2005, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of MxEnergy Electric Incorporated for Retail Electric Provider (REP) certification, Docket Number 30997 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 6, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30997.

TRD-200501533
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2005

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 18, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the Frisco and Allen Exchanges. Docket Number 31008.

The Application: The minor boundary amendment is being requested to transfer a small portion of serving area from the Frisco exchange to the Allen exchange of SBC Texas. This minor boundary amendment will allow SBC to efficiently and expeditiously provide service to all residents of a new apartment complex. SBC does not have adequate facilities from its Frisco exchange to provide local exchange service, but does have ample facilities in the neighboring Allen exchange to promptly provision service to the residents in the apartment complex.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 10, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31008.

TRD-200501620
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 13, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CenturyTel Acquisition LLC for a Service Provider Certificate of Operating Authority, Docket Number 31001 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 4, 2005. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31001.

TRD-200501618
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2005

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Notice of ERCOT's Filing for Approval of Unaffiliated Director

Notice is hereby given to the public of the April 8, 2005 filing with the Public Utility Commission of Texas (commission) of the Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of an Unaffiliated Director.

Docket Style and Number: Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of Unaffiliated Director, Docket Number 30994.

The Application: ERCOT seeks approval of an Unaffiliated Director of the ERCOT Board. The Commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.151 (Vernon 1998 and Supplement 2005). Pursuant to ERCOT bylaws, ERCOT's Corporate Members have approved the selection of the Unaffiliated Director. ERCOT's Nominating Committee unanimously selected Carolyn Lewis Gallagher as the Unaffiliated Director of the ERCOT Board. The director will be seated at the April 19, 2005, Board meeting and will serve pending commission consideration for approval.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or 1-800-735-2989. All correspondence should refer to Docket Number 30994.

TRD-200501617
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2005

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on April 14, 2005, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around April 25, 2005.

Docket Title and Number: Central Telephone Company of Texas, Inc., d/b/a Sprint Application for Approval of LRIC Study To Introduce Special Plan Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31002.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 31002. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 31002.

TRD-200501619
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2005

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Texas Water Development Board

Request for Statements of Qualifications on Water Research Study Priority Topics

The Texas Water Development Board (Board) requests the submission of Statements of Qualifications (SOQs) from interested applicants leading to the possible award of contracts for state Fiscal Year 2005 to conduct water research on seven priority topics. The total amount of the grants awarded by the Board shall not exceed $510,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) are available upon request from the Board, or may be found at the Secretary of State's Internet address: {http://www.sos.state.tx.us/tac/}; then sequentially select, "TAC Viewer," "Title 31," "Part 10," and "Chapter 355." Guidelines for responding to the SOQ, which include an application form and detailed information on the research topic, will be available at the Board's website at: {http://www.twdb.state.tx.us/publications/requestforproposals/requestsforproposals_index.htm}, or will be provided upon request.

Description of the Research Objectives and Purpose

The Board's grant contribution is estimated not to exceed the posted dollar value adjacent the priority research topic. SOQs are requested for the following priority research:

Linking WAMs and GAMs ($150,000)

Texas law mandates the development of state water planning cycles that ensure adequate supplies of water for the citizens of Texas throughout 50-year planning horizons. Water Availability Models (WAMs) and Groundwater Availability Models (GAMs) have been developed as management tools for use in the 50-year water planning cycles. A WAM is a computer-based simulation predicting the amount of water that would be in a river or stream under a specified set of conditions. A GAM is a computer-based model that simulates the flow of groundwater within an aquifer and its interaction with surface water features such as reservoirs, streams, and springs under a specified set of pumping and climate conditions.

Currently, the WAMs do not account for stream-aquifer interactions over time and the GAMs do not account for permitted surface-water withdrawals and/or return flows. Consequently, research is needed to assess the differences between WAMs and GAMs in how they consider groundwater and surface water and, more importantly, assess the potential for linking WAMs and GAMs to interactively exchange input/output simulation data at appropriate modeling time steps.

This study will (1) evaluate how WAMs and GAMs can be linked, (2) develop protocols for linking the models, (3) implement the protocols in a test case using the GAM of the Hill County part of the Trinity aquifer and the appropriate WAM(s), and (4) make recommendations on implementation for the rest of the state.

Digital climatic atlas of Texas ($60,000)

The study of water resources in Texas requires a basic knowledge of the spatial and temporal climate characteristics and variations within the state. The most current *Climatic Atlas of Texas*, LP-192, was published 22 years ago in 1983 by the Texas Department of Water Resources. Prior to this publication, the Texas Water Development Board published *The Climate and Physiography of Texas* as Report 53 in 1967. Data resolution and the technology used to store, analyze, and visualize climate data have improved much during the last 22 years. The National Weather Service (NWS) collects and archives gaged climate data in Texas and Oregon State's Spatial Climate Analysis Service (SCAS) currently uses the Parameter-elevations Regressions on Independent Slopes Model (PRISM) to spatially interpolate NWS climate data throughout the continental US at a 4 KM resolution.

A compilation of 1890 to 2000 climatic decadal statistics for NWS gage stations in Texas organized into an ArcGIS geodatabase will provide a valuable foundation for water resources studies conducted in Texas. In addition, the climate geodatabase would compliment the PRISM climate data currently available from the SCAS web site. The decadal

statistics will include annual and monthly means for precipitation, temperature, and lake or pan evaporation. The statistical results could be spatially interpolated onto 2.5 minute latitude-longitude state well grid (or the 4 KM resolution grid used by NEXRAD radar) using appropriate interpolation methods. Alternatively, the PRISM climate data may be collected, processed, and organized to coordinate with the decadal statistics from the NWS gages data within the geodatabase.

This study will (1) develop digital datasets of (a) monthly means and (b) annual means for each decade between 1890 to 2000 for precipitation, temperature, and evaporation and (2) produce a new climatic atlas of Texas similar in content to LP-192.

Aquifer tests from county availability studies ($25,000)

Since 1997, Texas counties have had the authority to require that persons seeking plat approval also provide evidence of adequate groundwater availability (quantity and quality), if the platted tract will be dependent on groundwater. This authority is typically exercised by way of a county rule or ordinance, applied to the platting process.

The adequacy of groundwater availability is demonstrated by the performance of a Groundwater Availability Study (GwAS), usually conducted early in the platting process. The scope of a GwAS generally consists of: regional and local characterization of the hydrogeologic setting of the platted site, determination of the hydraulic properties and estimated long term yield of the aquifer(s) beneath the site, and evaluation of the quality of water in the aquifer(s). These latter two tasks are usually accomplished with the installation and testing of wells on the platted site. Geophysical logs are usually run in at least one of these wells. Site-specific data that results from the GwAS includes: depth to water, the lithology, saturated thickness, transmissivity, and storativity of the aquifer(s), quality of water in the aquifer(s), and sustainable well yield. This data is then used to calculate or model the long-term (10 to 30 years) effects of cumulative, projected well pumping at the site. The tracts addressed by the GwAS are largely in the few tens of acres to few hundreds of acres in size. The cost to conduct a GwAS is generally in the $5,000 to $20,000 range, with much of the cost depending on the need to install test wells at the study site and the depths of these wells.

These reports and their data are currently a largely overlooked and unused resource that can and should be evaluated and considered for use in broader regional groundwater investigations such as Groundwater Availability Modeling.

This study will (1) identify those counties that require a GwAS as part of their platting process, (2) determine which GwAS protocols are followed (county-developed or 30TAC230) and obtain copies of all county-developed protocols, (3) obtain copies of all GwAS reports done to date, (4) review the data for possible use in broader studies, (5) develop a database of the reports and their key content and data, and (6) recommend a procedure for copies (hard and electronic) of the reports and raw data to be forwarded from the counties to the Board.

Urban landscape guide ($50,000)

Urban landscape irrigation in Texas can account for 40 to 60 percent of the total residential water use during summer months. Limited water supplies and rapid urbanization have prompted municipalities to implement water conservation landscape programs. The Water Conservation Best Management Practices Guide produced by the Water Conservation Implementation Task Force includes several recommendations to water-conserving landscapes. During the development of the document the definition of "water conserving landscape" was discussed and members of the Task Force agreed that such a definition was needed and that the nursery/landscape industry would need to cooperate in creating such a definition, but there were not adequate resources available at that point to define the term.

Because the landscape is an integrated environment, education about water conservation must take into account all of the components of the landscape. Focusing only on plant selection or only on irrigation of the landscape has been shown to be ineffective. This integrated approach can best be accomplished through one main resource that can be used as an acknowledged general reference tool by everyone involved in water conservation in the landscape.

An Urban Landscape Guide can be used as a reference by everyone involved in landscape water conservation: for the municipality it can serve as a guide for ordinance making, for the nursery/landscape industry it can serve as a guide for industry education, and for the end user it can provide a unified approach to water conservation, and help alleviate the confusion created when conflicting information is provided.

This study will (1) develop an urban landscape manual or guide that defines what a water conserving landscape consists of; (2) consider the landscape as an integrated environment, starting with the soil, the design and selection of plant material, irrigation methodology, and long and short-term management plans, including pest and disease control and nutrition; (3) relate these components to the Best Management Practices Guide; (4) provide guidance in developing landscape ordinances and water conservation landscape programs; and (5) provide this information for use by the nursery/landscape industry, water suppliers and municipalities, and the general public in Texas.

Drought monitoring index for Texas ($100,000)

During the 76th legislative session, the Texas Legislature created the Texas Drought Preparedness Council (Council), which includes representation from the Board. The Council provides assessments and public reports of drought-monitoring and water-supply conditions in Texas, and the Board is responsible for providing information on drought to the Council. The Council is authorized to consider meteorological, hydrological, or water supply conditions. Texas does not have the proper tools to report the levels of local dryness or determine the onset and duration of local or regional drought events. The purpose of this research is to improve the assessments and reports made by the Council.

The current drought monitoring indices for Texas are based on ten climatic regions that are too large to adequately represent, monitor, and report drought local conditions. Because the regions are so large, one part of the region may be in drought while the rest of the region is not. This research is needed to refine the reporting areas that drought is reported at a significantly smaller size than the climatic regions. Research shall investigate establishing a reporting area for each county in the state.

This research will (1) investigate dryness monitoring methods and drought event prediction tools, (2) recommend dryness monitoring methods and drought event prediction tools, (3) implement definitions for the beginning and duration of dry periods and drought events, (4) provide recommendations on the reporting of dryness and drought events on a local basis, and (5) make recommendations on implementation for end users.

Self-sealing evaporation ponds ($50,000)

Evaporation ponds are a relatively simple and low maintenance option for managing and disposing of desalination concentrate in small-scale applications. It may be particularly attractive for small communities in arid environments and where land costs are low. Typically, the largest outlay for evaporation ponds is that of the manufactured liner-which might potentially leak. In some cases, the chemistry of the concentrate can be changed with additives to create impermeable layering that makes the base of the pond self-sealing. This research is needed to better understand the self-sealing mechanism to be able to predict its performance in practical applications.

This study will (1) address the chemical, physical, and legal obstacles to the use of self-sealing evaporation ponds in Texas, (2) determine ranges of likely membrane concentrate compositions in Texas, (3) calculate and/or measure the ability of additives (for example, silica and clays) to impart self-sealing characteristics, (4) examine any regulatory obstacles to reliance on self-sealing evaporation ponds, and (5) provide a conceptual design and cost estimates for a self-sealing evaporation pond for a 1 million gallons per day brackish groundwater desalination facility.

Water accounting system for the Rio Grande below Fort Quitman ($75,000)

The State of Texas currently does not have an accounting system in place that is capable of tracking the State's share of daily, monthly, or annual flows in the Rio Grande under the provisions of the 1944 Treaty between the United States and Mexico. All accounting presently is performed by the International Boundary and Water Commission (IBWC) using outdated software that is difficult to understand and use. The State of Texas, namely the Texas Commission on Environmental Quality (TCEQ) and the Rio Grande Watermaster, does not have any means for independently validating or determining the State's share of Rio Grande water at different locations or for evaluating the impacts of proposed changes in the way water is used or accounted for on the Rio Grande below Fort Quitman.

This study will (1) consider flow, reservoir, and diversion data for both the United States and Mexico, and (2) develop a spreadsheet type of program to perform the required calculations and accounting on a monthly basis using daily measured flows and monthly reported diversions. The above tasks will require periodic consultation with IBWC staff, in coordination with TCEQ representatives and the Rio Grande Watermaster's office to assure the development of an accounting program that is consistent with IBWC's water accounting procedures.

Description of Applicant Criteria

The applicant should (1) demonstrate prior experience in the priority research topic; (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and (3) have excellent oral presentation and writing abilities. If the applicant is short-listed, the applicant should be prepared to make an oral presentation to Board staff. The scope of work, schedule, and contract amount will be negotiated after the Board selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next-most qualified applicant; however, a negotiation will not occur with applicants who are determined by the Board to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of the Board's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses are encouraged to submit statements of qualifications and/or participate as sub-contractors in the water research program. Ten double-sided, double-spaced copies of a completed Statement of Qualifications must be filed with the Board prior to 5:00 PM, June 8, 2005. Respondents to this request shall limit their Statement of Qualifications to the size previously mentioned, excluding the resumes of the project team members. Statements of Qualifications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, Room 537, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231--Capitol Station, Austin, Texas 78711-3231. All applicants must contact the Board to obtain the Board's guidelines for responding to the SOQ. Requests for information and the Board's guidelines for responding to the SOQ should be directed to Ms. Phyllis Thomas at the preceding address, by calling (512) 463-3154, or by e-mail to: {phyllis.thomas@twdb.state.tx.us}.

TRD-200501612
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: April 19, 2005

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist,

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also

be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501600
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 19, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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